

Senate File 2392 - Introduced

SENATE FILE _____
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3238)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to regulate viatical settlements, and providing for fees
2 and penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5446SV 82
5 da/rj/5

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1 1 Section 1. NEW SECTION. 508E.1A SHORT TITLE.
1 2 This Act may be cited as the "Viatical Settlements Act".
1 3 Sec. 2. Section 508E.2, Code 2007, is amended to read as
1 4 follows:
1 5 508E.2 DEFINITIONS.
1 6 As used in this chapter, unless the context otherwise
1 7 requires:
1 8 1. "Advertising" means any written, electronic, or printed
1 9 communication or any communication by means of recorded
1 10 telephone messages or transmitted on radio; television; the
1 11 internet; or similar communications media, including film
1 12 strips, motion pictures, and videos, published, disseminated,
1 13 circulated, or placed directly before the public in this
1 14 state, for the purpose of creating an interest in or inducing
1 15 a person to sell, assign, devise, bequest, or transfer the
1 16 death benefit or ownership of a life insurance policy pursuant
1 17 to a viatical settlement contract.
1 18 2. "Business of viatical settlements" means an activity
1 19 involved in but not limited to the offering, soliciting,
1 20 negotiating, procuring, effectuating, purchasing, investing,
1 21 financing, monitoring, tracking, underwriting, selling,
1 22 transferring, assigning, pledging, hypothecating, or in any
1 23 other manner acquiring an interest in a life insurance policy
1 24 by means of a viatical settlement contract.
1 25 ~~3.~~ 3. "Chronically ill" means any of the following:
1 26 a. Being unable to perform or maintain at least two
1 27 activities of daily living, including but not limited to
1 28 eating, toileting, transferring, bathing, dressing, or
1 29 continence.
1 30 b. Requiring substantial supervision to protect the
1 31 individual from threats to health and safety due to severe
1 32 cognitive impairment.
1 33 c. Having a level of disability similar to that described
1 34 in paragraph "a" as determined by the United States secretary
1 35 of health and human services.
2 1 ~~2.~~ 4. "Commissioner" means the commissioner of insurance.
2 2 5. a. "Financing entity" means an underwriter, placement
2 3 agent, lender, purchaser of securities, purchaser of a policy
2 4 or certificate from a viatical settlement provider, credit
2 5 enhancer, or any entity that has a direct ownership in a
2 6 policy or certificate that is the subject of a viatical
2 7 settlement contract, but subject to all of the following:
2 8 (1) Whose principal activity related to the transaction is
2 9 providing funds to effect the viatical settlement or purchase
2 10 of one or more viaticated policies.
2 11 (2) Who has an agreement in writing with one or more
2 12 licensed viatical settlement providers to finance the
2 13 acquisition of viatical settlement contracts.
2 14 b. "Financing entity" does not include a nonaccredited
2 15 investor or a viatical settlement purchaser.
2 16 6. "Fraudulent viatical settlement act" includes any of
2 17 the following:
2 18 a. An act or omission committed by any person who,

2 19 knowingly or with intent to defraud, for the purpose of
2 20 depriving another of property or for pecuniary gain, commits
2 21 or permits its employees or its agents to engage in acts
2 22 including any of the following:

2 23 (1) Presenting, causing to be presented, or preparing with
2 24 knowledge or belief that it will be presented to or by a
2 25 viatical settlement provider, viatical settlement broker,
2 26 viatical settlement purchaser, financing entity, insurer,
2 27 insurance producer, or any other person, false material
2 28 information, or concealing material information, as part of,
2 29 in support of, or concerning a fact material to one or more of
2 30 the following:

2 31 (a) An application for the issuance of a viatical
2 32 settlement contract or insurance policy.
2 33 (b) The underwriting of a viatical settlement contract or
2 34 insurance policy.
2 35 (c) A claim for payment or benefit pursuant to a viatical
3 1 settlement contract or insurance policy.
3 2 (d) Premiums paid on an insurance policy.
3 3 (e) Payments and changes in ownership or beneficiary made
3 4 in accordance with the terms of a viatical settlement contract
3 5 or insurance policy.
3 6 (f) The reinstatement or conversion of an insurance
3 7 policy.
3 8 (g) In the solicitation, offer, effectuation, or sale of a
3 9 viatical settlement contract or insurance policy.
3 10 (h) The issuance of written evidence of viatical
3 11 settlement contract or insurance policy.
3 12 (i) A financing transaction.

3 13 (2) Employing any plan, financial structure, device,
3 14 scheme, or artifice to defraud related to viaticated policies.
3 15 b. In the furtherance of a fraud or to prevent the
3 16 detection of a fraud to do, or permit an employee or agent to
3 17 do, any of the following:

3 18 (1) Remove, conceal, alter, destroy, or sequester from the
3 19 commissioner the assets or records of a licensee or other
3 20 person engaged in the business of viatical settlements.
3 21 (2) Misrepresent or conceal the financial condition of a
3 22 licensee, financing entity, insurer, or other person.
3 23 (3) Transact the business of viatical settlements in
3 24 violation of laws requiring a license, certificate of
3 25 authority, or other legal authority for the transaction of the
3 26 business of viatical settlements.
3 27 (4) File with the commissioner or the equivalent chief
3 28 insurance regulatory official of another jurisdiction a
3 29 document containing false information or otherwise conceal
3 30 information about a material fact from the commissioner.

3 31 c. Embezzlement, theft, misappropriation, or conversion of
3 32 moneys, funds, premiums, credits, or other property of a
3 33 viatical settlement provider, insurer, insured, viator,
3 34 insurance policyowner, or any other person engaged in the
3 35 business of viatical settlements or insurance.

4 1 d. Recklessly entering into, negotiating, brokering, or
4 2 otherwise dealing in a viatical settlement contract, the
4 3 subject of which is a life insurance policy that was obtained
4 4 by presenting false information concerning any fact material
4 5 to the policy or by concealing, for the purpose of misleading
4 6 another, information concerning any fact material to the
4 7 policy, where the person or the persons intended to defraud
4 8 the policy's issuer, the viatical settlement provider, or the
4 9 viator. As used in this paragraph, "recklessly" means
4 10 engaging in the conduct in conscious and clearly unjustifiable
4 11 disregard of a substantial likelihood of the existence of the
4 12 relevant facts or risks, such disregard involving a gross
4 13 deviation from acceptable standards of conduct.

4 14 e. Facilitating the change of state of ownership of a
4 15 policy or certificate or the state of residency of a viator to
4 16 a state or jurisdiction that does not have a law similar to
4 17 this chapter for the express purposes of evading or avoiding
4 18 the provisions of this chapter.

4 19 f. Attempting to commit, assisting, aiding or abetting in
4 20 the commission of, or conspiracy to commit the acts or
4 21 omissions specified in this subsection.

4 22 7. "Life insurance producer" means any person licensed in
4 23 this state as a resident or nonresident insurance producer who
4 24 has received qualification or authority for life insurance
4 25 coverage or a life line of coverage pursuant to chapter 522B.

4 26 8. "Person" means a natural person or a legal entity,
4 27 including, without limitation, an individual, partnership,
4 28 limited liability company, association, trust, or corporation.

4 29 9. "Policy" means an individual or group policy, group

4 30 certificate, contract, or arrangement of life insurance owned
4 31 by a resident of this state, regardless of whether delivered
4 32 or issued for delivery in this state.

4 33 10. "Related provider trust" means a titling trust or
4 34 other trust established by a licensed viatical settlement
4 35 provider or a financing entity for the sole purpose of holding
5 1 the ownership or beneficial interest in purchased policies in
5 2 connection with a financing transaction. The trust shall have
5 3 a written agreement with the licensed viatical settlement
5 4 provider under which the licensed viatical settlement provider
5 5 is responsible for ensuring compliance with all statutory and
5 6 regulatory requirements and under which the trust agrees to
5 7 make all records and files related to viatical settlement
5 8 transactions available to the commissioner as if those records
5 9 and files were maintained directly by the licensed viatical
5 10 settlement provider.

5 11 11. "Special purpose entity" means a corporation,
5 12 partnership, trust, limited liability company, or other
5 13 similar entity formed solely to provide either directly or
5 14 indirectly access to institutional capital markets for or in
5 15 connection with any of the following:

5 16 a. For a financing entity or licensed viatical settlement
5 17 provider.

5 18 b. (1) In connection with a transaction in which the
5 19 securities in the special purposes entity are acquired by the
5 20 viator or by qualified institutional buyers as defined in 17
5 21 C.F.R. } 230.144 promulgated by the United States securities
5 22 and exchange commission under the federal Securities Act of
5 23 1933, as amended, 15 U.S.C. } 77a et seq.

5 24 (2) In connection with a transaction in which the
5 25 securities pay a fixed rate of return commensurate with
5 26 established asset-backed institutional capital markets.

5 27 3- 12. "Terminally ill" means having an illness or
5 28 sickness that can reasonably be expected to result in death in
5 29 twenty-four months or less.

5 30 13. "Viatical settlement broker" means a person, including
5 31 a life insurance producer as provided for in section 508E.3,
5 32 who working exclusively on behalf of a viator and for a fee,
5 33 commission, or other valuable consideration, offers or
5 34 attempts to negotiate viatical settlement contracts between a
5 35 viator and one or more viatical settlement providers or one or
6 1 more viatical settlement brokers. Notwithstanding the manner
6 2 in which the viatical settlement broker is compensated, a
6 3 viatical settlement broker is deemed to represent only the
6 4 viator, and not the insurer or the viatical settlement
6 5 provider, and owes a fiduciary duty to the viator to act
6 6 according to the viator's instructions and in the best
6 7 interest of the viator. "Viatical settlement broker" does not
6 8 include an attorney, certified public accountant, or a
6 9 financial planner accredited by a nationally recognized
6 10 accreditation agency who is retained to represent the viator
6 11 and whose compensation is not paid directly or indirectly by
6 12 the viatical settlement provider or purchaser.

6 13 4- 14. a. "Viatical settlement contract" means a written
6 14 agreement entered into between a viator and a viatical
6 15 settlement provider and a person who owns or is insured under
6 16 a life insurance or any affiliate of the viatical settlement
6 17 provider establishing the terms under which compensation or
6 18 anything of value is or will be paid, which compensation or
6 19 value is less than the expected death benefits of the policy
6 20 in return for the viator's present or future assignment,
6 21 transfer, sale, devise, or bequest of the death benefit or
6 22 ownership of any portion of the insurance policy or
6 23 certificate, or who owns or is covered under a group life of
6 24 insurance policy.

6 25 b. "Viatical settlement contract" includes a premium
6 26 finance loan made for a life insurance policy by a lender to a
6 27 viator on, before, or after the date of issuance of the policy
6 28 where any of the following applies:

6 29 (1) The viator or the insured receives on the date of the
6 30 premium finance loan a guarantee of a future viatical
6 31 settlement value of the policy.

6 32 (2) The viator or the insured agrees on the date of the
6 33 premium finance loan to sell the policy or any portion of its
6 34 death benefit on any date following the issuance of the
6 35 policy.

7 1 c. "Viatical settlement contract" also includes the
7 2 transfer for compensation or value of ownership or beneficial
7 3 interest in a trust or other entity that owns a life insurance
7 4 policy if the trust or other entity was formed or availed of
7 5 for the principal purpose of acquiring one or more life

7 6 insurance policies, which life insurance policy insures the
7 7 life of a person residing in this state.
7 8 d. "Viatical settlement contract" does not mean a written
7 9 agreement entered into between a viator and a person having an
7 10 insurable interest in the viator's life. include any of the
7 11 following:
7 12 (1) A policy loan or accelerated death benefit made by the
7 13 insurer pursuant to the policy's terms.
7 14 (2) Loan proceeds that are used solely to pay any of the
7 15 following:
7 16 (a) Premiums for the policy.
7 17 (b) The costs of the loan, including, without limitation,
7 18 interest, arrangement fees, utilization fees and similar fees,
7 19 closing costs, legal fees and expenses, trustee fees and
7 20 expenses, and third-party collateral provider fees and
7 21 expenses, including fees payable to letter of credit issuers.
7 22 (3) A loan made by a bank or other licensed financial
7 23 institution in which the lender takes an interest in a life
7 24 insurance policy solely to secure repayment of a loan or, if
7 25 there is a default on the loan and the policy is transferred,
7 26 the transfer of such a policy by the lender, provided that the
7 27 default itself is not pursuant to an agreement or
7 28 understanding with any other person for the purpose of evading
7 29 regulation under this chapter.
7 30 (4) A loan made by a lender that does not violate
7 31 insurance premium finance law, provided that the premium
7 32 finance loan is not described in paragraph "b".
7 33 (5) An agreement where all the parties are closely related
7 34 to the insured by blood or law; have a lawful substantial
7 35 economic interest in the continued life, health, and bodily
8 1 safety of the person insured; or are trusts established
8 2 primarily for the benefit of such parties.
8 3 (6) Any designation, consent, or agreement by an insured
8 4 who is an employee of an employer in connection with the
8 5 purchase by the employer, or trust established by the
8 6 employer, of life insurance on the life of the employee.
8 7 (7) A bona fide business succession planning arrangement
8 8 between one or more of the following:
8 9 (a) Shareholders in a corporation or between a corporation
8 10 and one or more of its shareholders or one or more trusts
8 11 established by its shareholders.
8 12 (b) Partners in a partnership or between a partnership and
8 13 one or more of its partners or one or more trusts established
8 14 by its partners.
8 15 (c) Members in a limited liability company or between a
8 16 limited liability company and one or more of its members or
8 17 one or more trusts established by its members.
8 18 (8) An agreement entered into by a service recipient, or a
8 19 trust established by the service recipient, and a service
8 20 provider, or a trust established by the service provider, who
8 21 performs significant services for the service recipient's
8 22 trade or business.
8 23 (9) Any other contract, transaction, or arrangement
8 24 exempted from the definition of viatical settlement contract
8 25 by the commissioner based on a determination that the
8 26 contract, transaction, or arrangement is not of the type
8 27 intended to be regulated by this chapter.
8 28 15. a. "Viatical settlement provider" means a person,
8 29 other than a viator, that enters into or effectuates a
8 30 viatical settlement contract with a viator resident in this
8 31 state.
8 32 b. "Viatical settlement provider" does not include any of
8 33 the following:
8 34 (1) A bank, savings bank, savings and loan association,
8 35 credit union, or other licensed lending institution that takes
9 1 an assignment of a life insurance policy solely as collateral
9 2 for a loan.
9 3 (2) A premium finance company making premium finance loans
9 4 and exempted by the commissioner from the licensing
9 5 requirement under the premium finance laws that takes an
9 6 assignment of a life insurance policy solely as collateral for
9 7 a loan.
9 8 (3) The issuer of the life insurance policy.
9 9 (4) An authorized or eligible insurer that provides
9 10 stop-loss coverage or financial guaranty insurance to a
9 11 viatical settlement provider, purchaser, financing entity,
9 12 special purpose entity, or related provider trust.
9 13 (5) A natural person who enters into or effectuates no
9 14 more than one agreement in a calendar year for the transfer of
9 15 life insurance policies for any value less than the expected
9 16 death benefit.

9 17 (6) A financing entity.
9 18 (7) A special purpose entity.
9 19 (8) A related provider trust.
9 20 (9) A viatical settlement purchaser.
9 21 (10) Any other person that the commissioner determines is
9 22 not the type of person intended to be covered by the
9 23 definition of viatical settlement provider.
9 24 16. a. "Viatical settlement purchaser" means a person who
9 25 provides a sum of money as consideration for a life insurance
9 26 policy or an interest in the death benefits of a life
9 27 insurance policy, or a person who owns or acquires or is
9 28 entitled to a beneficial interest in a trust that owns a
9 29 viatical settlement contract or is the beneficiary of a life
9 30 insurance policy that has been or will be the subject of a
9 31 viatical settlement contract, for the purpose of deriving an
9 32 economic benefit.
9 33 b. "Viatical settlement purchaser" does not include any of
9 34 the following:
9 35 (1) A licensee under this chapter.
10 1 (2) An accredited investor or qualified institutional
10 2 buyer as defined, respectively, in 17 C.F.R. } 230.501(a) or
10 3 17 C.F.R. } 230.144A as promulgated by the United States
10 4 securities and exchange commission under the federal
10 5 Securities Act of 1933, as amended, 15 U.S.C. } 77a et seq.
10 6 (3) A financing entity.
10 7 (4) A special purpose entity.
10 8 (5) A related provider trust.
10 9 17. "Viaticated policy" means a life insurance policy or
10 10 certificate that has been acquired by a viatical settlement
10 11 provider pursuant to a viatical settlement contract.
10 12 5- 18. a. "Viator" means a person selling the owner of a
10 13 life insurance policy or a certificate holder under a group
10 14 policy who resides in this state and enters or seeks to enter
10 15 into a viatical settlement contract. "Viator" includes but is
10 16 not limited to an owner of a life insurance policy or a
10 17 certificate holder under a group policy insuring the life of
10 18 an individual with a terminal or chronic illness or condition
10 19 except where specifically addressed. If there is more than
10 20 one viator on a single policy and the viators are residents of
10 21 different states, the transaction shall be governed by the law
10 22 of the state in which the viator having the largest percentage
10 23 ownership resides or, if the viators hold equal ownership, the
10 24 state of residence of one viator agreed upon in writing by all
10 25 the viators.
10 26 b. "Viator" does not include any of the following:
10 27 (1) A licensee under this chapter, including a life
10 28 insurance producer acting as a viatical settlement broker
10 29 pursuant to this chapter.
10 30 (2) A qualified institutional buyer as defined in 17
10 31 C.F.R. } 230.144=144A as promulgated by the United States
10 32 securities and exchange commission under the federal
10 33 Securities Act of 1933, as amended, 15 U.S.C. } 77a et seq.
10 34 (3) A financing entity.
10 35 (4) A special purpose entity.
11 1 (5) A related provider trust.
11 2 Sec. 3. Section 508E.3, Code 2007, is amended by striking
11 3 the section and inserting in lieu thereof the following:
11 4 508E.3 LICENSE AND BOND REQUIREMENTS.
11 5 1. a. A person shall not operate as a viatical settlement
11 6 provider or viatical settlement broker without first obtaining
11 7 a license from the commissioner of the state of residence of
11 8 the viator.
11 9 b. (1) A life insurance producer who has been duly
11 10 licensed as a resident insurance producer with a life line of
11 11 authority in this state or the life insurance producer's home
11 12 state for at least one year and is licensed as a nonresident
11 13 producer in this state shall be deemed to meet the licensing
11 14 requirements of this section and shall be permitted to operate
11 15 as a viatical settlement broker.
11 16 (2) Not later than thirty days from the first day of
11 17 operating as a viatical settlement broker, the life insurance
11 18 producer shall notify the commissioner that the life insurance
11 19 producer is acting as a viatical settlement broker on a form
11 20 prescribed by the commissioner, and shall pay any applicable
11 21 fee of up to one hundred dollars as provided by rules adopted
11 22 by the commissioner. The notification shall include an
11 23 acknowledgment by the life insurance producer that the life
11 24 insurance producer will operate as a viatical settlement
11 25 broker in accordance with this chapter.
11 26 (3) The insurer that issued the policy being viaticated
11 27 shall not be responsible for any act or omission of a viatical

11 28 settlement broker or viatical settlement provider arising out
11 29 of or in connection with the viatical settlement transaction,
11 30 unless the insurer receives compensation for the placement of
11 31 a viatical settlement contract from the viatical settlement
11 32 provider or viatical settlement broker in connection with the
11 33 viatical settlement contract.

11 34 c. A person licensed as an attorney, certified public
11 35 accountant, or financial planner accredited by a nationally
12 1 recognized accreditation agency who is retained to represent
12 2 the viator, whose compensation is not paid directly or
12 3 indirectly by the viatical settlement provider, may negotiate
12 4 viatical settlement contracts on behalf of the viator without
12 5 having to obtain a license as a viatical settlement broker.
12 6 2. An application for a viatical settlement provider or
12 7 viatical settlement broker license shall be made to the
12 8 commissioner by the applicant on a form prescribed by the
12 9 commissioner, and the application shall be accompanied by a
12 10 fee of not more than one hundred dollars as provided by rules
12 11 adopted by the commissioner.

12 12 3. A license may be renewed from year to year on the
12 13 anniversary date upon payment of the annual renewal fee of not
12 14 more than one hundred dollars as provided by rules adopted by
12 15 the commissioner. A failure to pay the fee by the renewal
12 16 date results in expiration of the license.

12 17 4. An applicant shall provide information on forms
12 18 required by the commissioner. The commissioner shall have
12 19 authority, at any time, to require the applicant to fully
12 20 disclose the identity of all stockholders, partners, officers,
12 21 members, and employees, and the commissioner may, in the
12 22 exercise of the commissioner's discretion, refuse to issue a
12 23 license in the name of a legal entity if not satisfied that
12 24 any officer, employee, stockholder, partner, or member thereof
12 25 who may materially influence the applicant's conduct meets the
12 26 standards of this chapter.

12 27 5. A license issued to a legal entity authorizes all
12 28 partners, officers, members, and designated employees to act
12 29 as viatical settlement providers or viatical settlement
12 30 brokers, as applicable, under the license, and all those
12 31 persons shall be named in the application and any supplements
12 32 to the application.

12 33 6. Upon the filing of an application and the payment of
12 34 the license fee, the commissioner shall make an investigation
12 35 of each applicant and issue a license if the commissioner
13 1 finds that the applicant complies with all of the following:

13 2 a. If a viatical settlement provider, has provided a
13 3 detailed plan of operation.
13 4 b. Is competent and trustworthy and intends to act in good
13 5 faith in the capacity involved by the license applied for.
13 6 c. Has a good business reputation and has had experience,
13 7 training, or education so as to be qualified in the business
13 8 for which the license is applied for.

13 9 d. (1) If a viatical settlement provider, has
13 10 demonstrated evidence of financial responsibility in a format
13 11 prescribed by the commissioner through either a surety bond
13 12 executed and issued by an insurer authorized to issue surety
13 13 bonds in this state, or a deposit of cash, certificates of
13 14 deposit, or securities, or any combination thereof in the
13 15 amount of two hundred fifty thousand dollars.

13 16 (2) If a viatical settlement broker, has demonstrated
13 17 evidence of financial responsibility in a format prescribed by
13 18 the commissioner through either a surety bond executed and
13 19 issued by an insurer authorized to issue surety bonds in this
13 20 state, or a deposit of cash, certificates of deposit, or
13 21 securities, or any combination thereof in the amount of two
13 22 hundred fifty thousand dollars.

13 23 (3) The commissioner may demand evidence of financial
13 24 responsibility at any time the commissioner deems necessary.

13 25 (4) Any surety bond issued pursuant to this paragraph "d"
13 26 shall be in the favor of this state and shall specifically
13 27 authorize recovery by the commissioner on behalf of any person
13 28 in this state who sustained damages as the result of an
13 29 erroneous act, failure to act, conviction of fraud, or upon a
13 30 finding after hearing by the commissioner that a person has
13 31 engaged in any act or practice constituting a violation of
13 32 this chapter or a rule adopted or order issued under this
13 33 chapter of an unfair practice by the viatical settlement
13 34 provider or viatical settlement broker.

13 35 (5) Notwithstanding any provision of this paragraph "d" to
14 1 contrary, the commissioner shall accept, as evidence of
14 2 financial responsibility, proof that financial instruments in
14 3 accordance with the requirements in this paragraph "d" have

14 4 been filed with one state where the applicant is licensed as a
14 5 viatical settlement provider or viatical settlement broker.
14 6 e. If a legal entity, provides a certificate of good
14 7 standing from the state of its domicile.
14 8 f. If a viatical settlement provider or viatical
14 9 settlement broker, has provided an antifraud plan that meets
14 10 the requirements of section 508E.14, subsection 7.
14 11 7. The commissioner shall not issue a license to a
14 12 nonresident applicant unless a written designation of an agent
14 13 for service of process is filed and maintained with the
14 14 commissioner or the applicant has filed with the commissioner
14 15 the applicant's written irrevocable consent that any action
14 16 against the applicant may be commenced against the applicant
14 17 by service of process on the commissioner.
14 18 8. A viatical settlement provider or viatical settlement
14 19 broker shall provide to the commissioner new or revised
14 20 information about officers, ten-percent-or-more stockholders,
14 21 partners, directors, members, or designated employees within
14 22 thirty days of the change.
14 23 9. An individual licensed as a viatical settlement broker
14 24 shall complete on a biennial basis fifteen hours of training
14 25 related to viatical settlements and viatical settlement
14 26 transactions, as required by the commissioner; provided,
14 27 however, that a life insurance producer who is operating as a
14 28 viatical settlement broker pursuant to subsection 1, paragraph
14 29 "b", shall not be subject to the requirements of this
14 30 subsection. Any person failing to meet the requirements of
14 31 this subsection shall be subject to the penalties imposed by
14 32 the commissioner.
14 33 10. Fees collected pursuant to this section shall be
14 34 deposited into the general fund of the state.
14 35 Sec. 4. Section 508E.4, Code 2007, is amended by striking
15 1 the section and inserting in lieu thereof the following:
15 2 508E.4 LICENSE REVOCATION AND DENIAL.
15 3 1. The commissioner may refuse to issue, suspend, revoke,
15 4 or refuse to renew the license of a viatical settlement
15 5 provider or viatical settlement broker if the commissioner
15 6 finds that any of the following applies:
15 7 a. There was any material misrepresentation in the
15 8 application for the license.
15 9 b. The licensee or any officer, partner, member, or key
15 10 management personnel has been convicted of fraudulent or
15 11 dishonest practices, is subject to a final administrative
15 12 action, or is otherwise shown to be untrustworthy or
15 13 incompetent.
15 14 c. The viatical settlement provider demonstrates a pattern
15 15 of unreasonable payments to viators.
15 16 d. The licensee or any officer, partner, member, or key
15 17 management personnel has been found guilty of, or has pleaded
15 18 guilty or nolo contendere to, any felony, or to a misdemeanor
15 19 involving fraud or moral turpitude, regardless of whether a
15 20 judgment of conviction has been entered by the court.
15 21 e. The viatical settlement provider has entered into any
15 22 viatical settlement contract that has not been approved
15 23 pursuant to this chapter.
15 24 f. The viatical settlement provider has failed to honor
15 25 contractual obligations set out in a viatical settlement
15 26 contract.
15 27 g. The licensee no longer meets the requirements for
15 28 initial licensure.
15 29 h. The viatical settlement provider has assigned,
15 30 transferred, or pledged a viaticated policy to a person other
15 31 than a viatical settlement provider licensed in this state,
15 32 viatical settlement purchaser, an accredited investor, or
15 33 qualified institutional buyer as defined respectively in 17
15 34 C.F.R. } 230.501(a) or 17 C.F.R. } 230.144A as promulgated by
15 35 the United States securities and exchange commission under the
16 1 federal Securities Act of 1933, as amended, 15 U.S.C. } 77a et
16 2 seq., a financing entity, special purpose entity, or related
16 3 provider trust.
16 4 i. The licensee or any officer, partner, member, or key
16 5 management personnel has violated any provision of this
16 6 chapter.
16 7 2. The commissioner may suspend, revoke, or refuse to
16 8 renew the license of a viatical settlement broker or a life
16 9 insurance producer operating as a viatical settlement broker
16 10 pursuant to this chapter if the commissioner finds that the
16 11 viatical settlement broker or life insurance producer has
16 12 violated the provisions of this chapter or has otherwise
16 13 engaged in bad faith conduct with one or more viators.
16 14 3. If the commissioner denies a license application or

16 15 suspends, revokes, or refuses to renew the license of a
16 16 viatical settlement provider or viatical settlement broker, or
16 17 suspends, revokes, or refuses to renew a license of a life
16 18 insurance producer operating as a viatical settlement broker
16 19 pursuant to this chapter, the commissioner shall conduct a
16 20 hearing in accordance with chapter 17A.

16 21 Sec. 5. NEW SECTION. 508E.5 APPROVAL OF VIATICAL
16 22 SETTLEMENT CONTRACTS AND DISCLOSURE STATEMENTS.

16 23 A person shall not use a viatical settlement contract form
16 24 or provide to a viator a disclosure statement form in this
16 25 state unless first filed with and approved by the
16 26 commissioner. The commissioner shall disapprove a viatical
16 27 settlement contract form or disclosure statement form if, in
16 28 the commissioner's opinion, the contract or provisions
16 29 contained therein fail to meet the requirements of sections
16 30 508E.8, 508E.10, 508E.13, and 508E.14, subsection 2, or are
16 31 unreasonable, contrary to the interests of the public, or
16 32 otherwise misleading or unfair to the viator. At the
16 33 commissioner's discretion, the commissioner may require the
16 34 submission of advertising material.

16 35 Sec. 6. NEW SECTION. 508E.6 REPORTING REQUIREMENTS AND
17 1 PRIVACY.

17 2 1. Each viatical settlement provider shall file with the
17 3 commissioner on or before March 1 of each year an annual
17 4 statement containing such information as the commissioner may
17 5 adopt by rule. Such information shall be limited to only
17 6 those transactions where the viator is a resident of this
17 7 state. Notwithstanding chapter 22, individual transaction
17 8 data regarding the business of viatical settlements or data
17 9 that could compromise the privacy of personal, financial, and
17 10 health information of the viator or insured shall be filed
17 11 with the commissioner on a confidential basis.

17 12 2. Except as otherwise allowed or required by law, a
17 13 viatical settlement provider, viatical settlement broker,
17 14 insurance company, insurance producer, information bureau,
17 15 rating agency or company, or any other person with actual
17 16 knowledge of an insured's identity shall not disclose that
17 17 identity as an insured, or the insured's financial or medical
17 18 information to any other person unless the disclosure is any
17 19 of the following:

17 20 a. Necessary to effect a viatical settlement between the
17 21 viator and a viatical settlement provider and the viator and
17 22 insured have provided prior written consent to the disclosure.

17 23 b. Provided in response to an investigation or examination
17 24 by the commissioner or any other governmental officer or
17 25 agency or pursuant to the requirements of section 508E.14,
17 26 subsection 3.

17 27 c. A term of or condition to the transfer of a policy by
17 28 one viatical settlement provider to another viatical
17 29 settlement provider.

17 30 d. Necessary to permit a financing entity, related
17 31 provider trust, or special purpose entity to finance the
17 32 purchase of policies by a viatical settlement provider and the
17 33 viator and insured have provided prior written consent to the
17 34 disclosure.

17 35 e. Necessary to allow the viatical settlement provider,
18 1 viatical settlement broker, or their authorized
18 2 representatives to make contacts for the purpose of
18 3 determining health status.

18 4 f. Required to purchase stop-loss coverage or financial
18 5 guaranty insurance.

18 6 Sec. 7. NEW SECTION. 508E.7 EXAMINATION OR
18 7 INVESTIGATIONS.

18 8 1. AUTHORITY, SCOPE, AND SCHEDULING OF EXAMINATIONS.

18 9 a. (1) The commissioner may conduct an examination under
18 10 this chapter of a licensee as often as the commissioner in the
18 11 commissioner's discretion deems appropriate after considering
18 12 the factors set forth in this paragraph "a".

18 13 (2) In scheduling and determining the nature, scope, and
18 14 frequency of the examinations, the commissioner shall consider
18 15 such matters as the consumer complaints, results of financial
18 16 statement analyses and ratios, changes in management or
18 17 ownership, actuarial opinions, reports of independent
18 18 certified public accountants, and other relevant criteria as
18 19 determined by the commissioner.

18 20 b. For purposes of completing an examination of a licensee
18 21 under this chapter, the commissioner may examine or
18 22 investigate any person, or the business of any person, in so
18 23 far as the examination or investigation is, in the sole
18 24 discretion of the commissioner, necessary or material to the
18 25 examination of the licensee.

18 26 c. In lieu of an examination under this chapter of any
18 27 foreign or alien licensee licensed in this state, the
18 28 commissioner may, at the commissioner's discretion, accept an
18 29 examination report on the licensee as prepared by the
18 30 commissioner for the licensee's state of domicile or
18 31 port-of-entry state.

18 32 d. As far as practical, the examination of a foreign or
18 33 alien licensee shall be made in cooperation with the insurance
18 34 supervisory officials of other states in which the licensee
18 35 transacts business.

19 1 2. RECORD RETENTION REQUIREMENTS.

19 2 a. A person required to be licensed pursuant to section
19 3 508E.3 shall for five years retain copies of all of the
19 4 following:

19 5 (1) Proposed, offered, or executed contracts, purchase
19 6 agreements, underwriting documents, policy forms, and
19 7 applications from the date of the proposal, offer, or
19 8 execution of the contract or purchase agreement, whichever is
19 9 later.

19 10 (2) All checks, drafts, or other evidence and
19 11 documentation related to the payment, transfer, deposit, or
19 12 release of funds from the date of the transaction.

19 13 (3) All other records and documents related to the
19 14 requirements of this chapter.

19 15 b. This section does not relieve a person of the
19 16 obligation to produce documents described in paragraph "a" to
19 17 the commissioner after the retention period has expired if the
19 18 person has retained the documents.

19 19 c. Records required to be retained by paragraph "a" must
19 20 be legible and complete and may be retained in paper,
19 21 photograph, microprocess, magnetic, mechanical, or electronic
19 22 media, or by any process that accurately reproduces or forms a
19 23 durable medium for the reproduction of a record.

19 24 3. CONDUCT OF EXAMINATIONS.

19 25 a. Upon determining that an examination should be
19 26 conducted, the commissioner shall issue an examination warrant
19 27 appointing one or more examiners to perform the examination
19 28 and instructing them as to the scope of the examination. In
19 29 conducting the examination, the examiner shall observe those
19 30 guidelines and procedures set forth in the examiners handbook
19 31 adopted by the national association of insurance
19 32 commissioners. The commissioner may also adopt rules for such
19 33 other guidelines or procedures as the commissioner may deem
19 34 appropriate.

19 35 b. Every licensee or person from whom information is
20 1 sought, its officers, directors, and agents shall provide to
20 2 the examiners timely, convenient, and free access at all
20 3 reasonable hours at its offices to all books, records,
20 4 accounts, papers, documents, assets, and computer or other
20 5 recordings relating to the property, assets, business, and
20 6 affairs of the licensee being examined. The officers,
20 7 directors, employees, and agents of the licensee or person
20 8 shall facilitate the examination and aid in the examination so
20 9 far as it is in their power to do so. The refusal of a
20 10 licensee, by its officers, directors, employees, or agents, to
20 11 submit to examination or to comply with any reasonable written
20 12 request of the commissioner shall be grounds for suspension or
20 13 refusal of, or nonrenewal of, any license or authority held by
20 14 the licensee to engage in the viatical settlement business or
20 15 other business subject to the commissioner's jurisdiction.
20 16 Any proceedings for suspension, revocation, or refusal of any
20 17 license or authority shall be conducted pursuant to section
20 18 507B.6A.

20 19 c. The commissioner shall have the power to issue
20 20 subpoenas, to administer oaths, and to examine under oath any
20 21 person as to any matter pertinent to the examination. Upon
20 22 the failure or refusal of a person to obey a subpoena, the
20 23 commissioner may petition a court of competent jurisdiction,
20 24 and upon proper showing, the court may enter an order
20 25 compelling the witness to appear and testify or produce
20 26 documentary evidence. A failure to obey the court order shall
20 27 be punishable as contempt of court.

20 28 d. When making an examination under this chapter, the
20 29 commissioner may retain attorneys, appraisers, independent
20 30 actuaries, independent certified public accountants, or other
20 31 professionals and specialists as examiners, the reasonable
20 32 cost of which shall be borne by the licensee that is the
20 33 subject of the examination.

20 34 e. Nothing contained in this chapter shall be construed to
20 35 limit the commissioner's authority to terminate or suspend an
21 1 examination in order to pursue other legal or regulatory

21 2 action pursuant to the insurance laws of this state. Findings
21 3 of fact and conclusions made pursuant to any examination shall
21 4 be prima facie evidence in any legal or regulatory action.
21 5 f. The commissioner's authority to use and, if
21 6 appropriate, to make public any final or preliminary
21 7 examination report, any examiner or licensee workpapers, or
21 8 other documents, or any other information discovered or
21 9 developed during the course of any examination in the
21 10 furtherance of any legal or regulatory action shall be
21 11 permitted consistent with section 507.14.

21 12 4. EXAMINATION REPORTS.

21 13 a. Examination reports shall be comprised of only facts
21 14 appearing upon the books, records, or other documents of the
21 15 licensee, its agents, or other persons examined, or as
21 16 ascertained from the testimony of its officers, agents, or
21 17 other persons examined concerning its affairs, and such
21 18 conclusions and recommendations as the examiners find
21 19 reasonably warranted from the facts.

21 20 b. Not later than sixty days following completion of the
21 21 examination, the examiner in charge shall file with the
21 22 commissioner a verified written report of examination under
21 23 oath. Upon receipt of the verified report, the commissioner
21 24 shall transmit the report to the licensee examined, together
21 25 with a notice that shall afford the licensee examined a
21 26 reasonable opportunity of not more than thirty days to make a
21 27 written submission or rebuttal with respect to any matters
21 28 contained in the examination report.

21 29 c. In the event the commissioner determines that
21 30 regulatory action is appropriate as a result of an
21 31 examination, the commissioner may initiate any proceedings or
21 32 actions provided by law.

21 33 5. CONFIDENTIALITY OF EXAMINATION INFORMATION.

21 34 a. Notwithstanding chapter 22, the names and individual
21 35 identification data for all viators shall be considered
22 1 private and confidential information and shall not be
22 2 disclosed by the commissioner, unless required by law.

22 3 b. Except as otherwise provided in this chapter, all
22 4 examination reports, working papers, recorded information,
22 5 documents, and copies thereof produced by, obtained by, or
22 6 disclosed to the commissioner or any other person in the
22 7 course of an examination made under this chapter, or in the
22 8 course of an analysis or investigation by the commissioner of
22 9 the financial condition or market conduct of a licensee, shall
22 10 be confidential by law and privileged, shall not be subject to
22 11 chapter 22, shall not be subject to subpoena, and shall not be
22 12 subject to discovery or admissible in evidence in any private
22 13 civil action. The commissioner is authorized to use the
22 14 documents, materials, or other information in the furtherance
22 15 of any regulatory or legal action brought as part of the
22 16 commissioner's official duties.

22 17 c. Documents, materials, or other information, including
22 18 but not limited to all working papers and copies, in the
22 19 possession or control of the national association of insurance
22 20 commissioners and its affiliates and subsidiaries shall be
22 21 confidential by law and privileged, shall not be subject to
22 22 chapter 22, shall not be subject to subpoena, and shall not be
22 23 subject to discovery or admissible in evidence in any private
22 24 civil action if they are any of the following:

22 25 (1) Created, produced, or obtained by or disclosed to the
22 26 national association of insurance commissioners and its
22 27 affiliates and subsidiaries in the course of assisting an
22 28 examination made under this chapter, or assisting the
22 29 commissioner in the analysis or investigation of the financial
22 30 condition or market conduct of a licensee.

22 31 (2) Disclosed to the national association of insurance
22 32 commissioners and its affiliates and subsidiaries under
22 33 paragraph "d" by the commissioner.

22 34 (3) For the purposes of paragraph "b", "chapter" includes
22 35 the law of another state or jurisdiction that is substantially
23 1 similar to this chapter.

23 2 d. Neither the commissioner nor any person that received
23 3 the documents, materials, or other information while acting
23 4 under the authority of the commissioner, including the
23 5 national association of insurance commissioners and its
23 6 affiliates and subsidiaries, shall be permitted to testify in
23 7 any private civil action concerning any confidential
23 8 documents, materials, or information subject to paragraph "a".

23 9 e. In order to assist in the performance of the
23 10 commissioner's duties, the commissioner may do all of the
23 11 following:

23 12 (1) Share documents, materials, or other information,

23 13 including the confidential and privileged documents,
23 14 materials, or information subject to paragraph "a", with other
23 15 state, federal, and international regulatory agencies, with
23 16 the national association of insurance commissioners and its
23 17 affiliates and subsidiaries, and with state, federal, and
23 18 international law enforcement authorities, provided that the
23 19 recipient agrees to maintain the confidentiality and
23 20 privileged status of the documents, materials, communications,
23 21 or other information.

23 22 (2) Receive documents, materials, communications, or
23 23 information, including otherwise confidential and privileged
23 24 documents, materials, or information, from the national
23 25 association of insurance commissioners and its affiliates and
23 26 subsidiaries, notwithstanding chapter 22, and from regulatory
23 27 and law enforcement officials of other foreign or domestic
23 28 jurisdictions, and shall maintain as confidential or
23 29 privileged any documents, materials, or information received
23 30 with notice or the understanding that it is confidential or
23 31 privileged under the laws of the jurisdiction that is the
23 32 source of the documents, materials, or information.

23 33 (3) Enter into agreements governing sharing and use of
23 34 information consistent with section 507.14, subsection 4.

23 35 f. No waiver of any applicable privilege or claim of
24 1 confidentiality in the documents, materials, or information
24 2 shall occur as a result of disclosure to the commissioner
24 3 under this section or as a result of sharing as authorized in
24 4 paragraph "c".

24 5 g. A privilege established under the law of any state or
24 6 jurisdiction that is substantially similar to the privilege
24 7 established under this subsection shall be available and
24 8 enforced in any proceeding in, and in any court of, this
24 9 state.

24 10 h. Nothing contained in this chapter shall prevent or be
24 11 construed as prohibiting the commissioner from disclosing the
24 12 content of an examination report, preliminary examination
24 13 report or results, or any matter relating thereto, to the
24 14 commissioner of any other state or country, or to law
24 15 enforcement officials of this or any other state or agency of
24 16 the federal government at any time or to the national
24 17 association of insurance commissioners, so long as such agency
24 18 or office receiving the report or matters relating thereto
24 19 agrees in writing to hold it confidential and in a manner
24 20 consistent with this chapter.

24 21 6. CONFLICT OF INTEREST.

24 22 a. An examiner may not be appointed by the commissioner if
24 23 the examiner, either directly or indirectly, has a conflict of
24 24 interest or is affiliated with the management of or owns a
24 25 pecuniary interest in any person subject to examination under
24 26 this chapter. This section shall not be construed to
24 27 automatically preclude an examiner from being any of the
24 28 following:

24 29 (1) A viator.

24 30 (2) An insured in a viaticated insurance policy.

24 31 (3) A beneficiary in an insurance policy that is proposed
24 32 to be viaticated.

24 33 b. Notwithstanding the requirements of paragraph "a", the
24 34 commissioner may retain from time to time, on an individual
24 35 basis, qualified actuaries, certified public accountants, or
25 1 other similar individuals who are independently practicing
25 2 their professions, even though these persons may from time to
25 3 time be similarly employed or retained by persons subject to
25 4 examination under this chapter.

25 5 7. COST OF EXAMINATIONS.

25 6 a. The commissioner may appoint insurance examiners who,
25 7 while conducting examinations, shall possess all the powers
25 8 conferred upon the commissioner for such purposes. The entire
25 9 time of the examiners shall be under the control of the
25 10 commissioner, and shall be employed as the commissioner may
25 11 direct.

25 12 b. The commissioner may, when in the commissioner's
25 13 judgment it is advisable, appoint assistants to aid in making
25 14 examinations. The examiners shall be compensated on the basis
25 15 of the normal workweek of the insurance division at a salary
25 16 to be fixed by the commissioner subject, however, to the
25 17 provisions of section 505.14. The compensation shall be paid
25 18 from appropriations for such purposes upon certification of
25 19 the commissioner, which shall be reimbursed as provided in
25 20 sections 507.8 and 507.9.

25 21 c. When making an examination under this chapter, the
25 22 commissioner may retain attorneys, appraisers, independent
25 23 actuaries, independent certified public accountants, or other

25 24 professionals and specialists as examiners, the reasonable
25 25 cost of which shall be borne by the company which is the
25 26 subject of the examination.

25 27 d. The commissioner shall, upon the completion of an
25 28 examination, or at such regular intervals prior to completion
25 29 as the commissioner determines, prepare an account of the
25 30 costs incurred in performing and preparing the report of such
25 31 examinations which shall be charged to and paid by the company
25 32 examined, and upon failure or refusal of a company examined to
25 33 pay such costs, the same may be recovered by the commissioner
25 34 or the attorney general in an action brought in the name of
25 35 the state, and the commissioner may also revoke the
26 1 certificate of authority of such company to transact business
26 2 within this state.

26 3 8. IMMUNITY FROM LIABILITY.

26 4 a. No cause of action shall arise, nor shall any liability
26 5 be imposed, against the commissioner, the commissioner's
26 6 authorized representatives, or any examiner appointed by the
26 7 commissioner for any statements made or conduct performed in
26 8 good faith while carrying out the provisions of this chapter.

26 9 b. No cause of action shall arise, nor shall any liability
26 10 be imposed, against any person for the act of communicating or
26 11 delivering information or data to the commissioner or the
26 12 commissioner's authorized representative or examiner pursuant
26 13 to an examination made under this chapter, if the act of
26 14 communication or delivery was performed in good faith and
26 15 without fraudulent intent or the intent to deceive. This
26 16 paragraph does not abrogate or modify in any way any common
26 17 law or statutory privilege or immunity heretofore enjoyed by
26 18 any person identified in paragraph "a".

26 19 c. A person identified in paragraph "a" or "b" shall be
26 20 entitled to an award of attorney fees and costs if the person
26 21 is the prevailing party in a civil cause of action for libel,
26 22 slander, or any other relevant tort arising out of activities
26 23 in carrying out the provisions of this chapter and the party
26 24 bringing the action was not substantially justified in doing
26 25 so. For purposes of this paragraph, a proceeding is
26 26 "substantially justified" if it had a reasonable basis in law
26 27 or fact at the time that it was initiated.

26 28 9. INVESTIGATIVE AUTHORITY OF THE COMMISSIONER. The
26 29 commissioner may investigate suspected fraudulent viatical
26 30 settlement acts and persons engaged in the business of
26 31 viatical settlements.

26 32 Sec. 8. NEW SECTION. 508E.8 DISCLOSURE TO VIATOR.

26 33 1. With each application for a viatical settlement, a
26 34 viatical settlement provider or viatical settlement broker
26 35 shall provide the viator with at least the following
27 1 disclosures no later than the time the application for the
27 2 viatical settlement contract is signed by all parties. The
27 3 disclosures shall be provided in a separate document that is
27 4 signed by the viator and the viatical settlement provider or
27 5 viatical settlement broker, and shall provide all of the
27 6 following information:

27 7 a. There are possible alternatives to viatical settlement
27 8 contracts including any accelerated death benefits or policy
27 9 loans offered under the viator's life insurance policy.

27 10 b. That a viatical settlement broker represents
27 11 exclusively the viator, and not the insurer or the viatical
27 12 settlement provider, and owes a fiduciary duty to the viator,
27 13 including a duty to act according to the viator's instructions
27 14 and in the best interest of the viator.

27 15 c. Some or all of the proceeds of the viatical settlement
27 16 may be taxable under federal income tax and state franchise
27 17 and income taxes, and assistance should be sought from a
27 18 professional tax advisor.

27 19 d. Proceeds of the viatical settlement could be subject to
27 20 the claims of creditors.

27 21 e. Receipt of the proceeds of a viatical settlement may
27 22 adversely affect the viator's eligibility for Medicaid or
27 23 other government benefits or entitlements, and advice should
27 24 be obtained from the appropriate government agencies.

27 25 f. The viator has the right to rescind a viatical
27 26 settlement contract before the earlier of sixty days after the
27 27 date upon which the viatical settlement contract is executed
27 28 by all parties or thirty days after the viatical settlement
27 29 proceeds have been paid to the viator, as provided in section
27 30 508E.10, subsection 3. Recision, if exercised by the viator,
27 31 is effective only if both notice of the recision is given, and
27 32 the viator repays all proceeds and any premiums, loans, and
27 33 loan interest paid on account of the viatical settlement
27 34 within the recision period. If the insured dies during the

recision period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all viatical settlement proceeds and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser within sixty days of the insured's death.

g. Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer's or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

h. Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits, that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.

i. Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements. The national association of insurance commissioners form for the brochure shall be used unless another form is developed or approved by the commissioner.

j. The disclosure document shall contain the following language:

"All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

k. Following execution of a viatical contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in this chapter. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contracts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement, or by the authorized representative of a duly licensed viatical settlement provider.

2. A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide all of the following information:

a. The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated.

b. The name, business address, and telephone number of the viatical settlement provider.

c. Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser.

d. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, a notice of the viator's possible loss of coverage on the other lives under the policy and to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

e. The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract.

f. Whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third-party escrow agent, and the fact that the

viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

3. A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide all of the following information:

- a. The name, business address, and telephone number of the viatical settlement broker.
- b. A full, complete, and accurate description of all offers, counteroffers, acceptances, and rejections relating to the proposed viatical settlement contract.
- c. Any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts.
- d. The amount and method of calculating the broker's compensation. As used in this paragraph, "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.
- e. Where any portion of the viatical settlement broker's compensation, as defined in paragraph "d", is taken from a proposed viatical settlement offer, the broker shall disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.

4. If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the viatical settlement provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty days after the change.

5. A viatical settlement provider shall provide the viatical settlement purchaser with at least the following disclosures prior to the date the viatical settlement purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any viatical purchase contract or in a separate document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosure to the viatical settlement purchaser:

- a. The viatical settlement purchaser will receive no returns including dividends and interest, until the insured dies and a death claim payment is made.
- b. The actual annual rate of return on a viatical settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual "guaranteed" rate of return is not determinable.
- c. The viaticated life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the viatical settlement purchaser.
- d. The viatical settlement purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.
- e. The viatical settlement purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement. These payments may reduce the viatical settlement purchaser's return. If a party other than the viatical settlement purchaser is responsible for the payment, the name and address of that party also shall be disclosed.
- f. The viatical settlement purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. The viatical settlement provider shall disclose the amount of such premiums, if applicable.
- g. The name, business address, and telephone number of the independent third party providing escrow services and the relationship to the viatical settlement broker.
- h. The amount of any trust fees or other expenses to be charged to the viatical settlement purchaser shall be disclosed.
- i. Whether the viatical settlement purchaser is entitled to a refund of all or part of the viatical settlement purchaser's investment under the viatical settlement contract if the policy is later determined to be null and void.
- j. That group policies may contain limitations or caps in

32 22 the conversion rights, that additional premiums may have to be
32 23 paid if the policy is converted, the name of the party
32 24 responsible for the payment of the additional premiums, and,
32 25 if a group policy is terminated and replaced by another group
32 26 policy, that there may be no right to convert the original
32 27 coverage.

32 28 k. The risks associated with policy contestability
32 29 including but not limited to the risk that the viatical
32 30 settlement purchaser will have no claim or only a partial
32 31 claim to death benefits should the insurer rescind the policy
32 32 within the contestability period.

32 33 l. Whether the viatical settlement purchaser will be the
32 34 owner of the policy in addition to being the beneficiary, and
32 35 if the viatical settlement purchaser is the beneficiary only
33 1 and not also the owner, the special risks associated with that
33 2 status, including but not limited to the risk that the
33 3 beneficiary may be changed or the premium may not be paid.

33 4 m. The experience and qualifications of the person who
33 5 determines the life expectancy of the insured, including
33 6 in-house staff, independent physicians, and specialty firms
33 7 that weigh medical and actuarial data; the information this
33 8 projection is based on; and the relationship of the projection
33 9 maker to the viatical settlement provider, if any.

33 10 n. A brochure describing the process of investment in
33 11 viatical settlements. The national association of insurance
33 12 commissioners form for the brochure shall be used unless
33 13 another form is developed and approved by the commissioner.

33 14 6. A viatical settlement provider shall provide the
33 15 viatical settlement purchaser with at least the following
33 16 disclosures no later than at the time of the assignment,
33 17 transfer, or sale of all or a portion of an insurance policy.
33 18 The disclosures shall be contained in a document signed by the
33 19 viatical settlement purchaser and viatical settlement
33 20 provider, and shall make all of the following disclosures to
33 21 the viatical settlement purchaser:

33 22 a. All the life expectancy certifications obtained by the
33 23 provider in the process of determining the price paid to the
33 24 viator.

33 25 b. Whether premium payments or other costs related to the
33 26 policy have been escrowed. If escrowed, state the date upon
33 27 which the escrowed funds will be depleted and whether the
33 28 viatical settlement purchaser will be responsible for payment
33 29 of premiums thereafter and, if so, the amount of the premiums.

33 30 c. Whether premium payments or other costs related to the
33 31 policy have been waived. If waived, disclose whether the
33 32 viatical settlement purchaser will be responsible for payment
33 33 of the premiums if the insurer that wrote the policy
33 34 terminates the waiver after purchase and the amount of those
33 35 premiums.

34 1 d. The type of policy offered or sold, i.e., whole life,
34 2 term life, universal life, or a group policy certificate, any
34 3 additional benefits contained in the policy, and the current
34 4 status of the policy.

34 5 e. If the policy is term insurance, the special risks
34 6 associated with term insurance including but not limited to
34 7 the viatical settlement purchaser's responsibility for
34 8 additional premiums if the viator continues the term policy at
34 9 the end of the current term.

34 10 f. Whether the policy is contestable.

34 11 g. Whether the insurer that wrote the policy has any
34 12 additional rights that could negatively affect or extinguish
34 13 the viatical settlement purchaser's rights under the viatical
34 14 settlement contract, what these rights are, and under what
34 15 conditions these rights are activated.

34 16 h. The name and address of the person responsible for
34 17 monitoring the insured's condition. The viatical settlement
34 18 provider shall describe how often the monitoring of the
34 19 insured's condition is done, how the date of death is
34 20 determined, and how and when this information will be
34 21 transmitted to the viatical settlement purchaser.

34 22 Sec. 9. NEW SECTION. 508E.9 DISCLOSURE TO INSURER.

34 23 Prior to the initiation of a plan, transaction, or series
34 24 of transactions, a viatical settlement broker, or viatical
34 25 settlement provider, shall fully disclose to an insurer a
34 26 plan, transaction, or series of transactions to which the
34 27 viatical settlement broker or viatical settlement provider is
34 28 a party to originate, renew, continue, or finance a life
34 29 insurance policy with the insurer for the purpose of engaging
34 30 in the business of viatical settlements at any time prior to,
34 31 or during the first five years after, issuance of the policy.

34 32 Sec. 10. NEW SECTION. 508E.10 GENERAL RULES.

34 33 1. a. A viatical settlement provider entering into a
34 34 viatical settlement contract shall first obtain all of the
34 35 following:
35 1 (1) If the viator is the insured, a written statement from
35 2 a licensed attending physician that the viator is of sound
35 3 mind and under no constraint or undue influence to enter into
35 4 a viatical settlement contract.
35 5 (2) A document in which the insured consents to the
35 6 release of the insured's medical records to a licensed
35 7 viatical settlement provider, viatical settlement broker, and
35 8 the insurance company that issued the life insurance policy
35 9 covering the life of the insured.
35 10 b. Within twenty days after a viator executes documents
35 11 necessary to transfer any rights under an insurance policy or
35 12 within twenty days of entering any agreement, option, promise,
35 13 or any other form of understanding, expressed or implied, to
35 14 viaticate the policy, the viatical settlement provider shall
35 15 give written notice to the insurer that issued that insurance
35 16 policy that the policy has or will become a viaticated policy.
35 17 The notice shall be accompanied by the documents required by
35 18 paragraph "c".
35 19 c. The viatical provider shall deliver a copy of the
35 20 medical release required under paragraph "a", subparagraph
35 21 (2), a copy of the viator's application for the viatical
35 22 settlement contract, the notice required under paragraph "b",
35 23 and a request for verification of coverage to the insurer that
35 24 issued the life policy that is the subject of the viatical
35 25 transaction. The national association of insurance
35 26 commissioners form for verification of coverage shall be used
35 27 unless another form is developed and approved by the
35 28 commissioner.
35 29 d. The insurer shall respond to a request for verification
35 30 of coverage submitted on an approved form by a viatical
35 31 settlement provider or viatical settlement broker within
35 32 thirty days of the date the request is received and shall
35 33 indicate whether, based on the medical evidence and documents
35 34 provided, the insurer intends to pursue an investigation at
35 35 this time regarding the validity of the insurance contract or
36 1 possible fraud. The insurer shall accept a request for
36 2 verification of coverage made on a national association of
36 3 insurance commissioners form or any other form developed and
36 4 approved by the commissioner. The insurer shall accept an
36 5 original, facsimile, or electronic copy of such request and
36 6 any accompanying authorization signed by the viator. A
36 7 failure by the insurer to meet its obligations under this
36 8 subsection shall be a violation of sections 508E.11 and
36 9 508E.16.
36 10 e. Prior to or at the time of execution of the viatical
36 11 settlement contract, the viatical settlement provider shall
36 12 obtain a witnessed document in which the viator consents to
36 13 the viatical settlement contract, represents that the viator
36 14 has a full and complete understanding of the viatical
36 15 settlement contract, that the viator has a full and complete
36 16 understanding of the benefits of the life insurance policy,
36 17 acknowledges that the viator is entering into the viatical
36 18 settlement contract freely and voluntarily, and, for persons
36 19 with a terminal or chronic illness or condition, acknowledges
36 20 that the insured has a terminal or chronic illness or
36 21 condition and that the terminal or chronic illness or
36 22 condition was diagnosed after the life insurance policy was
36 23 issued.
36 24 f. If a viatical settlement broker performs any of these
36 25 activities required of the viatical settlement provider, the
36 26 viatical settlement provider is deemed to have fulfilled the
36 27 requirements of this section.
36 28 2. All medical information solicited or obtained by any
36 29 licensee shall be subject to the applicable provisions of
36 30 state law relating to confidentiality of medical information,
36 31 including section 505.8.
36 32 3. All viatical settlement contracts entered into in this
36 33 state shall provide the viator with an absolute right to
36 34 rescind the contract before the earlier of sixty days after
36 35 the date upon which the viatical settlement contract is
37 1 executed by all parties or thirty days after the viatical
37 2 settlement proceeds have been sent to the viator as provided
37 3 in section 508E.10, subsection 4. Rescission by the viator may
37 4 be conditioned upon the viator both giving notice and repaying
37 5 to the viatical settlement provider within the rescission period
37 6 all viatical settlement proceeds, and any premiums, loans, and
37 7 loan interest paid by or on behalf of the viatical settlement
37 8 provider in connection with or as a consequence of the

37 9 viatical settlement. If the insured dies during the recision
37 10 period, the viatical settlement contract shall be deemed to
37 11 have been rescinded, subject to repayment to the viatical
37 12 settlement provider or purchaser of all viatical settlement
37 13 proceeds, and any premiums, loans, and loan interest that have
37 14 been paid by the viatical settlement provider or purchaser,
37 15 which shall be paid within sixty days of the death of the
37 16 insured. In the event of any recision, if the viatical
37 17 settlement provider has paid commissions or other compensation
37 18 to a viatical settlement broker in connection with the
37 19 rescinded transaction, the viatical settlement broker shall
37 20 refund all such commissions and compensation to the viatical
37 21 settlement provider within five business days following
37 22 receipt of written demand from the viatical settlement
37 23 provider, which demand shall be accompanied by either the
37 24 viator's notice of recision if rescinded at the election of
37 25 the viator, or a notice of the death of the insured if
37 26 rescinded by reason of the death of the insured within the
37 27 applicable recision period.

37 28 4. The viatical settlement provider shall instruct the
37 29 viator to send the executed documents required to effect the
37 30 change in ownership, assignment, or change in beneficiary
37 31 directly to the independent escrow agent. Within three
37 32 business days after the date the escrow agent receives the
37 33 document, or from the date the viatical settlement provider
37 34 receives the documents, if the viator erroneously provides the
37 35 documents directly to the viatical settlement provider, the
38 1 viatical settlement provider shall pay or transfer the
38 2 viatical settlement proceeds into an escrow or trust account
38 3 maintained in a state or federally chartered financial
38 4 institution whose deposits are insured by the federal deposit
38 5 insurance corporation. Upon payment of the viatical
38 6 settlement proceeds into the escrow account, the escrow agent
38 7 shall deliver the original change in ownership, assignment, or
38 8 change in beneficiary forms to the viatical settlement
38 9 provider or related provider trust, or other designated
38 10 representative of the viatical settlement provider. Upon the
38 11 escrow agent's receipt of the acknowledgment of the properly
38 12 completed transfer of ownership, assignment, or designation of
38 13 beneficiary from the insurance company, the escrow agent shall
38 14 pay the viatical settlement proceeds to the viator.

38 15 5. A failure to tender consideration to the viator for the
38 16 viatical settlement contract within the time set forth in the
38 17 disclosure pursuant to section 508E.8, subsection 1, paragraph
38 18 "g", renders the viatical settlement contract voidable by the
38 19 viator for lack of consideration until the time consideration
38 20 is tendered to and accepted by the viator. Funds shall be
38 21 deemed sent by a viatical settlement provider to a viator as
38 22 of the date that the escrow agent either releases funds for
38 23 wire transfer to the viator or places a check for delivery to
38 24 the viator via the United States postal service or other
38 25 nationally recognized delivery service.

38 26 6. A contact with the insured for the purpose of
38 27 determining the health status of the insured by the viatical
38 28 settlement provider or viatical settlement broker after the
38 29 viatical settlement has occurred shall only be made by the
38 30 viatical settlement provider or viatical settlement broker
38 31 licensed pursuant to section 508E.3 or its authorized
38 32 representatives and shall be limited to once every three
38 33 months for insureds with a life expectancy of more than one
38 34 year, and to no more than once per month for insureds with a
38 35 life expectancy of one year or less. The viatical settlement
39 1 provider or viatical settlement broker shall explain the
39 2 procedure for these contacts at the time the viatical
39 3 settlement contract is entered into. The limitations set
39 4 forth in this subsection shall not apply to any contact with
39 5 an insured for reasons other than determining the insured's
39 6 health status. A viatical settlement provider and a viatical
39 7 settlement broker shall be responsible for the actions of
39 8 their authorized representatives.

39 9 Sec. 11. NEW SECTION. 508E.11 PROHIBITED PRACTICES.

39 10 1. It is a violation of this chapter for any person to
39 11 enter into a viatical settlement contract at any time prior to
39 12 the application or issuance of a policy which is the subject
39 13 of a viatical settlement contract or within a five-year period
39 14 commencing with the date of issuance of the insurance policy
39 15 or certificate unless the viator certifies to the viatical
39 16 settlement provider that one or more of the following
39 17 conditions have been met within the five-year period:

39 18 a. The policy was issued upon the viator's exercise of
39 19 conversion rights arising out of a group or individual policy,

39 20 provided the total of the time covered under the conversion
39 21 policy plus the time covered under the prior policy is at
39 22 least sixty months. The time covered under a group policy
39 23 shall be calculated without regard to any change in insurance
39 24 carriers, provided the coverage has been continuous and under
39 25 the same group sponsorship.

39 26 b. The viator submits independent evidence to the viatical
39 27 settlement provider that one or more of the following
39 28 conditions have been met within the five-year period:

39 29 (1) The viator or insured is terminally or chronically
39 30 ill.

39 31 (2) The viator's spouse dies.

39 32 (3) The viator divorces the viator's spouse.

39 33 (4) The viator retires from full-time employment.

39 34 (5) The viator becomes physically or mentally disabled and
39 35 a physician determines that the disability prevents the viator
40 1 from maintaining full-time employment.

40 2 (6) A final order, judgment, or decree is entered by a
40 3 court of competent jurisdiction, on the application of a
40 4 creditor of the viator, adjudicating the viator bankrupt or
40 5 insolvent, or approving a petition seeking reorganization of
40 6 the viator or appointing a receiver, trustee, or liquidator to
40 7 all or a substantial part of the viator's assets.

40 8 c. The viator enters into a viatical settlement contract
40 9 more than two years after the date of issuance of a policy
40 10 and, with respect to the policy, at all times prior to the
40 11 date that is two years after policy issuance, all of the
40 12 following conditions are met:

40 13 (1) Policy premiums have been funded exclusively with
40 14 unencumbered assets, including an interest in the life
40 15 insurance policy being financed only to the extent of its net
40 16 cash surrender value, provided by, or fully recourse liability
40 17 incurred by, the insured or a person described in section
40 18 508E.2, subsection 14, paragraph "c", subparagraph (3).

40 19 (2) There is no agreement or understanding with any other
40 20 person to guarantee any such liability or to purchase, or
40 21 stand ready to purchase, the policy, including through an
40 22 assumption or forgiveness of the loan.

40 23 (3) Neither the insured nor the policy has been evaluated
40 24 for settlement.

40 25 2. Copies of the independent evidence described in
40 26 subsection 1, paragraph "b", and documents required by section
40 27 508E.10, subsection 1, shall be submitted to the insurer when
40 28 the viatical settlement provider or other party entering into
40 29 a viatical settlement contract with a viator submits a request
40 30 to the insurer for verification of coverage. The copies shall
40 31 be accompanied by a letter of attestation from the viatical
40 32 settlement provider that the copies are true and correct
40 33 copies of the documents received by the viatical settlement
40 34 provider.

40 35 3. If the viatical settlement provider submits to the
41 1 insurer a copy of the owner's or insured's certification
41 2 described in and the independent evidence required by
41 3 subsection 1, paragraph "b" when the provider submits a
41 4 request to the insurer to effect the transfer of the policy or
41 5 certificate to the viatical settlement provider, the copy
41 6 shall be deemed to conclusively establish that the viatical
41 7 settlement contract satisfies the requirements of this section
41 8 and the insurer shall timely respond to the request.

41 9 4. An insurer shall not, as a condition of responding to a
41 10 request for verification of coverage or effecting the transfer
41 11 of a policy pursuant to a viatical settlement contract,
41 12 require that the viator, insured, viatical settlement
41 13 provider, or viatical settlement broker sign any form,
41 14 disclosure, consent, or waiver form that has not been
41 15 expressly approved by the commissioner for use in connection
41 16 with viatical settlement contracts in this state.

41 17 5. Upon receipt of a properly completed request for change
41 18 of ownership or beneficiary of a policy, the insurer shall
41 19 respond in writing within thirty days with written
41 20 acknowledgment confirming that the change has been effected or
41 21 specifying the reasons why the requested change cannot be
41 22 processed. The insurer shall not unreasonably delay effecting
41 23 a change of ownership or beneficiary and shall not otherwise
41 24 seek to interfere with any viatical settlement contract
41 25 lawfully entered into in this state.

41 26 Sec. 12. NEW SECTION. 508E.12 PROHIBITED PRACTICES AND
41 27 CONFLICTS OF INTEREST.

41 28 1. With respect to any viatical settlement contract or
41 29 insurance policy, a viatical settlement broker shall not
41 30 knowingly solicit an offer from, effectuate a viatical

41 31 settlement with, or make a sale to any viatical settlement
41 32 provider, viatical settlement purchaser, financing entity, or
41 33 related provider trust that is controlling, controlled by, or
41 34 under common control with such viatical settlement broker.
41 35 2. With respect to any viatical settlement contract or
42 1 insurance policy, a viatical settlement provider shall not
42 2 knowingly enter into a viatical settlement contract with a
42 3 viator, if, in connection with such viatical settlement
42 4 contract, anything of value will be paid to a viatical
42 5 settlement broker that is controlling, controlled by, or under
42 6 common control with such viatical settlement provider or the
42 7 viatical settlement purchaser, financing entity, or related
42 8 provider trust that is involved in such viatical settlement
42 9 contract.

42 10 3. A viatical settlement provider shall not enter into a
42 11 premium finance agreement with any person or agency, or any
42 12 person affiliated with such person or agency, pursuant to
42 13 which such person or agency shall receive any proceeds, fees,
42 14 or other consideration, directly or indirectly, from the
42 15 policy or owner of the policy or any other person with respect
42 16 to the premium finance agreement or any viatical settlement
42 17 contract or other transaction related to such policy that are
42 18 in addition to the amounts required to pay the principal,
42 19 interest, and service charges related to policy premiums
42 20 pursuant to the premium finance agreement or subsequent sale
42 21 of such agreement. Any payments, charges, fees, normal
42 22 insurance commissions, or other amounts in addition to the
42 23 amounts required to pay the principal, interest, and service
42 24 charges related to policy premiums paid under the premium
42 25 finance agreement shall be remitted to the original owner of
42 26 the policy or to the original owner's estate if the original
42 27 owner is not living at the time of the determination of the
42 28 overpayment.

42 29 4. A violation of subsection 1, 2, or 3 shall be deemed a
42 30 fraudulent viatical settlement act.

42 31 5. No viatical settlement provider shall enter into a
42 32 viatical settlement contract unless the viatical settlement
42 33 promotional, advertising, and marketing materials, as may be
42 34 prescribed by rules adopted by the commissioner, have been
42 35 filed with the commissioner. In no event shall any marketing
43 1 materials expressly reference that the insurance is free for
43 2 any period of time. The inclusion of any reference in the
43 3 marketing materials that would cause a viator to reasonably
43 4 believe that the insurance is free for any period of time
43 5 shall be considered a violation of this chapter.

43 6 6. No life insurance producer, insurance company, viatical
43 7 settlement broker, or viatical settlement provider shall make
43 8 any statement or representation to the applicant or
43 9 policyholder in connection with the sale or financing of a
43 10 life insurance policy to the effect that the insurance is free
43 11 or without cost to the policyholder for any period of time
43 12 unless provided in the policy.

43 13 Sec. 13. NEW SECTION. 508E.13 ADVERTISING FOR VIATICAL
43 14 SETTLEMENTS.

43 15 The purpose of this section is to provide prospective
43 16 viators with clear and unambiguous statements in the
43 17 advertisement of viatical settlements and to assure the clear,
43 18 truthful, and adequate disclosure of the benefits, risks,
43 19 limitations, and exclusions of any viatical settlement
43 20 contract. This purpose is intended to be accomplished by
43 21 rules adopted by the commissioner for the establishment of
43 22 guidelines and standards of permissible and impermissible
43 23 conduct in the advertising of viatical settlements to assure
43 24 that product descriptions are presented in a manner that
43 25 prevents unfair, deceptive, or misleading advertising, and is
43 26 conducive to accurate presentation and description of viatical
43 27 settlements through the advertising media and materials used
43 28 by viatical settlement licensees.

43 29 1. This section shall apply to any advertising of viatical
43 30 settlement contracts or related products or services intended
43 31 for dissemination in this state, including internet
43 32 advertising viewed by persons located in this state. Where
43 33 disclosure requirements are established pursuant to federal
43 34 regulation, this section shall be interpreted so as to
43 35 minimize or eliminate conflict with federal regulation
44 1 wherever possible.

44 2 2. Every viatical settlement licensee shall establish and
44 3 at all times maintain a system of control over the content,
44 4 form, and method of dissemination of all advertisements of its
44 5 contracts, products, and services. All advertisements,
44 6 regardless of by whom written, created, designed, or

44 7 presented, shall be the responsibility of the viatical
44 8 settlement licensees, as well as the individual who created or
44 9 presented the advertisement. A system of control shall
44 10 include regular, routine notification, at least once a year,
44 11 to agents and others authorized by the viatical settlement
44 12 licensee who disseminate advertisements of the requirements
44 13 and procedures for approval prior to the use of any
44 14 advertisements not furnished by the viatical settlement
44 15 licensee.

44 16 3. An advertisement shall be truthful and not misleading
44 17 in fact or by implication. The form and content of an
44 18 advertisement of a viatical settlement contract shall be
44 19 sufficiently complete and clear so as to avoid deception. It
44 20 shall not have the capacity or tendency to mislead or deceive.
44 21 Whether an advertisement has the capacity or tendency to
44 22 mislead or deceive shall be determined by the commissioner
44 23 from the overall impression that the advertisement may be
44 24 reasonably expected to create upon a person of average
44 25 education or intelligence within the segment of the public to
44 26 which it is directed.

44 27 4. The information required to be disclosed under this
44 28 section shall not be minimized, rendered obscure, or presented
44 29 in an ambiguous fashion or intermingled with the text of the
44 30 advertisement so as to be confusing or misleading.

44 31 a. An advertisement shall not omit material information or
44 32 use words, phrases, statements, references, or illustrations
44 33 if the omission or use has the capacity, tendency, or effect
44 34 of misleading or deceiving viators as to the nature or extent
44 35 of any benefit, loss covered, premium payable, or state or
45 1 federal tax consequence. The fact that the viatical
45 2 settlement contract offered is made available for inspection
45 3 prior to consummation of the sale, or an offer is made to
45 4 refund the payment if the viator is not satisfied or that the
45 5 viatical settlement contract includes a free-look period that
45 6 satisfies or exceeds legal requirements, does not remedy a
45 7 misleading statement.

45 8 b. An advertisement shall not use the name or title of a
45 9 life insurance company or a life insurance policy unless the
45 10 advertisement has been approved by the insurer.

45 11 c. An advertisement shall not state or imply that interest
45 12 charged on an accelerated death benefit or a policy loan is
45 13 unfair, inequitable, or in any manner an incorrect or improper
45 14 practice.

45 15 d. The words "free", "no cost", "without cost", "no
45 16 additional cost", "at no extra cost", or words of similar
45 17 import shall not be used with respect to any benefit or
45 18 service unless true. An advertisement may specify the charge
45 19 for a benefit or a service or may state that a charge is
45 20 included in the payment or use other appropriate language.

45 21 e. Testimonials, appraisals, analyses, or endorsements
45 22 used in advertisements must be genuine; represent the current
45 23 opinion of the author; be applicable to the viatical
45 24 settlement contract product or service advertised, if any; and
45 25 be accurately reproduced with sufficient completeness to avoid
45 26 misleading or deceiving prospective viators as to the nature
45 27 or scope of the testimonials, appraisal, analysis, or
45 28 endorsement. In using a testimonial, appraisal, analysis, or
45 29 endorsement, a licensee under this chapter makes as its own
45 30 all the statements contained therein, and the statements are
45 31 subject to all of the provisions of this section.

45 32 (1) If the individual making a testimonial, appraisal,
45 33 analysis, or an endorsement has a financial interest in the
45 34 party making use of the testimonial, appraisal, analysis, or
45 35 endorsement, either directly or through a related entity as a
46 1 stockholder, director, officer, employee, or otherwise, or
46 2 receives any benefit directly or indirectly other than
46 3 required union scale wages, that fact shall be prominently
46 4 disclosed in the advertisement.

46 5 (2) An advertisement shall not state or imply that a
46 6 viatical settlement contract benefit or product or service has
46 7 been approved or endorsed by a group of individuals, society,
46 8 association, or other organization unless that is the fact and
46 9 unless any relationship between an organization and the
46 10 viatical settlement licensee is disclosed. If the entity
46 11 making the endorsement or testimonial is owned, controlled, or
46 12 managed by the viatical settlement licensee, or receives any
46 13 payment or other consideration from the viatical settlement
46 14 licensee for making an endorsement or testimonial, that fact
46 15 shall be disclosed in the advertisement.

46 16 (3) When an endorsement refers to benefits received under
46 17 a viatical settlement contract, all pertinent information

46 18 shall be retained by the viatical settlement licensee for a
46 19 period of five years after its use.

46 20 5. An advertisement shall not contain statistical
46 21 information unless it accurately reflects recent and relevant
46 22 facts. The source of all statistics used in an advertisement
46 23 shall be identified.

46 24 6. An advertisement shall not disparage an insurer,
46 25 viatical settlement provider, viatical settlement broker,
46 26 insurance producer, policy, services, or methods of marketing.

46 27 7. The name of the viatical settlement licensee shall be
46 28 clearly identified in all advertisements about the viatical
46 29 settlement licensee or its viatical settlement contract,
46 30 products, or services, and if any specific viatical settlement
46 31 contract is advertised, the viatical settlement contract shall
46 32 be identified either by form number or some other appropriate
46 33 description. If an application is part of the advertisement,
46 34 the name of the viatical settlement provider shall be shown on
46 35 the application.

47 1 8. An advertisement shall not use a trade name, group
47 2 designation, name of the parent company of a viatical
47 3 settlement licensee, name of a particular division of the
47 4 viatical settlement licensee, service mark, slogan, symbol or
47 5 other device, or reference without disclosing the name of the
47 6 viatical settlement licensee, if the advertisement would have
47 7 the capacity or tendency to mislead or deceive as to the true
47 8 identity of the viatical settlement licensee, or to create the
47 9 impression that a company other than the viatical settlement
47 10 licensee would have any responsibility for the financial
47 11 obligation under a viatical settlement contract.

47 12 9. An advertisement shall not use any combination of
47 13 words, symbols, or physical materials that by their content,
47 14 phraseology, shape, color, or other characteristics are so
47 15 similar to a combination of words, symbols, or physical
47 16 materials used by a government program or agency or otherwise
47 17 appear to be of such a nature that they tend to mislead
47 18 prospective viators into believing that the solicitation is in
47 19 some manner connected with a government program or agency.

47 20 10. An advertisement may state that a viatical settlement
47 21 licensee is licensed in the state where the advertisement
47 22 appears, provided it does not exaggerate that fact or suggest
47 23 or imply that a competing viatical settlement licensee may not
47 24 be so licensed. The advertisement may ask the audience to
47 25 consult the viatical settlement licensee's internet site or
47 26 contact the commissioner to find out if the state requires
47 27 licensing and, if so, whether the viatical settlement provider
47 28 or viatical settlement broker is licensed.

47 29 11. An advertisement shall not create the impression that
47 30 the viatical settlement provider, its financial condition or
47 31 status, the payment of its claims or the merits, desirability,
47 32 or advisability of its viatical settlement contracts are
47 33 recommended or endorsed by any government entity.

47 34 12. The name of the actual viatical settlement licensee
47 35 shall be stated in each of its advertisements. An
48 1 advertisement shall not use a trade name, any group
48 2 designation, name of any affiliate, or controlling entity of
48 3 the viatical settlement licensee, service mark, slogan,
48 4 symbol, or other device in a manner that would have the
48 5 capacity or tendency to mislead or deceive as to the true
48 6 identity of the actual viatical settlement licensee or create
48 7 the false impression that an affiliate or controlling entity
48 8 would have any responsibility for the financial obligation of
48 9 the viatical settlement licensee.

48 10 13. An advertisement shall not directly or indirectly
48 11 create the impression that any division or agency of the state
48 12 or of the United States government endorses, approves, or
48 13 favors any of the following:

48 14 a. A viatical settlement licensee or its business
48 15 practices or methods of operation.

48 16 b. The merits, desirability, or advisability of any
48 17 viatical settlement contract.

48 18 c. Any viatical settlement contract.

48 19 d. Any life insurance policy or life insurance company.

48 20 14. If the advertiser emphasizes the speed with which the
48 21 viatication will occur, the advertising must disclose the
48 22 average time frame from completed application to the date of
48 23 offer and from acceptance of the offer to receipt of the funds
48 24 by the viator.

48 25 15. If the advertising emphasizes the dollar amounts
48 26 available to viators, the advertising shall disclose the
48 27 average purchase price as a percent of face value obtained by
48 28 viators contracting with the licensee during the past six

48 29 months.
48 30 Sec. 14. NEW SECTION. 508E.14 FRAUD PREVENTION AND
48 31 CONTROL
48 32 1. FRAUDULENT VIATICAL SETTLEMENT ACTS == INTERFERENCE AND
48 33 PARTICIPATION OF CONVICTED FELONS PROHIBITED.
48 34 a. A person shall not commit a fraudulent viatical
48 35 settlement act.
49 1 b. A person shall not knowingly or intentionally interfere
49 2 with the enforcement of the provisions of this chapter or
49 3 investigations of suspected or actual violations of this
49 4 chapter.
49 5 c. A person in the business of viatical settlements shall
49 6 not knowingly or intentionally permit any person convicted of
49 7 a felony involving dishonesty or breach of trust to
49 8 participate in the business of viatical settlements.
49 9 2. FRAUD WARNING REQUIRED.
49 10 a. A viatical settlements contract and application for a
49 11 viatical settlement, regardless of the form of transmission,
49 12 shall contain the following statement or a substantially
49 13 similar statement:
49 14 "Any person who knowingly presents false information in an
49 15 application for insurance or viatical settlement contract is
49 16 guilty of a crime and may be subject to fines and confinement
49 17 in prison."
49 18 b. The lack of a statement as required in paragraph "a"
49 19 does not constitute a defense in any prosecution for a
49 20 fraudulent viatical settlement act.
49 21 3. MANDATORY REPORTING OF FRAUDULENT VIATICAL SETTLEMENT
49 22 ACTS.
49 23 a. Any person engaged in the business of viatical
49 24 settlements having knowledge or a reasonable suspicion that a
49 25 fraudulent viatical settlement act is being, will be, or has
49 26 been committed shall provide to the commissioner such
49 27 information as required by and in a manner prescribed by rules
49 28 adopted by the commissioner.
49 29 b. Any other person having knowledge or a reasonable
49 30 belief that a fraudulent viatical settlement act is being,
49 31 will be, or has been committed may provide to the commissioner
49 32 the information required by and in a manner prescribed by
49 33 rules adopted by the commissioner.
49 34 4. IMMUNITY FROM LIABILITY.
49 35 a. No civil liability shall be imposed on and no cause of
50 1 action shall arise from a person's furnishing information
50 2 concerning suspected, anticipated, or completed fraudulent
50 3 viatical settlement acts or suspected or completed fraudulent
50 4 insurance acts, if the information is provided to or received
50 5 from any of the following:
50 6 (1) The commissioner or the commissioner's employees,
50 7 agents, or representatives.
50 8 (2) A federal, state, or local law enforcement or
50 9 regulatory official or the official's employees, agents, or
50 10 representatives.
50 11 (3) A person involved in the prevention and detection of
50 12 fraudulent viatical settlement acts or that person's agents,
50 13 employees, or representatives.
50 14 (4) The national association of insurance commissioners;
50 15 the national association of securities dealers; the north
50 16 American securities administrators association; their
50 17 employees, agents, or representatives; or other regulatory
50 18 body overseeing life insurance, viatical settlements,
50 19 securities, or investment fraud.
50 20 (5) A life insurer that issued the life insurance policy
50 21 covering the life of the insured.
50 22 b. Paragraph "a" does not apply to a statement made with
50 23 actual malice. In an action brought against a person for
50 24 filing a report or furnishing other information concerning a
50 25 fraudulent viatical settlement act, the party bringing the
50 26 action shall plead specifically any allegation that paragraph
50 27 "a" does not apply because the person filing the report or
50 28 furnishing the information did so with actual malice.
50 29 c. A person furnishing information as identified in
50 30 paragraph "a" shall be entitled to an award of attorney fees
50 31 and costs if the person is the prevailing party in a civil
50 32 cause of action for libel, slander, or any other relevant tort
50 33 arising out of an activity in carrying out the provisions of
50 34 this chapter and the party bringing the action was not
50 35 substantially justified in doing so. For purposes of this
51 1 paragraph, a proceeding is substantially justified if it had a
51 2 reasonable basis in law or fact at the time that it was
51 3 initiated. However, such an award does not apply to any
51 4 person furnishing information concerning the person's own

51 5 fraudulent viatical settlement act.
51 6 d. This section does not abrogate or modify a common law
51 7 or statutory privilege or immunity enjoyed by a person
51 8 described in paragraph "a".
51 9 5. CONFIDENTIALITY.
51 10 a. A document or evidence provided pursuant to subsection
51 11 4 or obtained by the commissioner in an investigation of a
51 12 suspected or actual fraudulent viatical settlement act shall
51 13 be privileged and confidential, notwithstanding chapter 22,
51 14 shall not be a public record, and shall not be subject to
51 15 discovery or subpoena in a civil or criminal action.
51 16 b. Paragraph "a" does not prohibit the release by the
51 17 commissioner of a document or evidence obtained in an
51 18 investigation of a suspected or actual fraudulent viatical
51 19 settlement act if any of the following applies:
51 20 (1) In an administrative or judicial proceeding to enforce
51 21 laws administered by the commissioner.
51 22 (2) To a federal, state, or local law enforcement or
51 23 regulatory agency, to an organization established for the
51 24 purpose of detecting and preventing fraudulent viatical
51 25 settlement acts, or to the national association of insurance
51 26 commissioners.
51 27 (3) At the discretion of the commissioner, to a person in
51 28 the business of viatical settlements that is aggrieved by a
51 29 fraudulent viatical settlement act.
51 30 c. Release of a document or evidence under paragraph "b"
51 31 does not abrogate or modify the privilege granted in paragraph
51 32 "a".
51 33 6. OTHER LAW ENFORCEMENT OR REGULATORY AUTHORITY. This
51 34 chapter shall not do any of the following:
51 35 a. Preempt the authority or relieve the duty of other law
52 1 enforcement or regulatory agencies to investigate, examine,
52 2 and prosecute suspected violations of law.
52 3 b. Prevent or prohibit a person from disclosing
52 4 voluntarily information concerning viatical settlement fraud
52 5 to a law enforcement or regulatory agency other than the
52 6 commissioner.
52 7 c. Limit the powers granted elsewhere by the laws of this
52 8 state to the commissioner or an insurance fraud unit to
52 9 investigate and examine possible violations of law and to take
52 10 appropriate action against wrongdoers.
52 11 7. VIATICAL SETTLEMENT ANTIFRAUD INITIATIVES.
52 12 a. A viatical settlement provider or viatical settlement
52 13 broker shall have in place antifraud initiatives reasonably
52 14 calculated to detect, prosecute, and prevent fraudulent
52 15 viatical settlement acts. At the discretion of the
52 16 commissioner, the commissioner may order, or a licensee may
52 17 request and the commissioner may grant, such modifications of
52 18 the following required initiatives as necessary to ensure an
52 19 effective antifraud program. The modifications may be more or
52 20 less restrictive than the required initiatives so long as the
52 21 modifications may reasonably be expected to accomplish the
52 22 purpose of this section.
52 23 b. Antifraud initiatives shall include all of the
52 24 following:
52 25 (1) A fraud investigator, who may be a viatical settlement
52 26 provider, viatical settlement broker, a viatical settlement
52 27 provider's or viatical settlement broker's employee, or an
52 28 independent contractor.
52 29 (2) An antifraud plan, which shall be submitted to the
52 30 commissioner. The antifraud plan shall include, but is not
52 31 limited to all of the following:
52 32 (a) A description of the procedures for detecting and
52 33 investigating possible fraudulent viatical settlement acts and
52 34 procedures for resolving material inconsistencies between
52 35 medical records and insurance applications.
53 1 (b) A description of the procedures for reporting possible
53 2 fraudulent viatical settlement acts to the commissioner.
53 3 (c) A description of the plan for antifraud education and
53 4 training of underwriters and other personnel.
53 5 (d) A description or chart outlining the organizational
53 6 arrangement of the antifraud personnel who are responsible for
53 7 the investigation and reporting of possible fraudulent
53 8 viatical settlement acts and investigating unresolved material
53 9 inconsistencies between medical records and insurance
53 10 applications.
53 11 c. An antifraud plan submitted to the commissioner shall
53 12 be privileged and confidential, notwithstanding chapter 22,
53 13 shall not be a public record, and shall not be subject to
53 14 discovery or subpoena in a civil or criminal action.
53 15 Sec. 15. NEW SECTION. 508E.15 INJUNCTIONS == CIVIL

53 16 REMEDIES == CEASE AND DESIST ORDERS == CIVIL PENALTY.
53 17 1. In addition to the penalties and other enforcement
53 18 provisions of this chapter, if any person violates this
53 19 chapter or any rule implementing this chapter, the
53 20 commissioner may seek an injunction in a court of competent
53 21 jurisdiction and may apply for a temporary or permanent order
53 22 that the commissioner determines is necessary to restrain the
53 23 person from committing the violation.
53 24 2. A person damaged by the act of a person in violation of
53 25 this chapter may bring a civil action against the person
53 26 committing the violation in a court of competent jurisdiction.
53 27 3. The commissioner may issue, in accordance with chapter
53 28 17A, a cease and desist order upon a person that violates any
53 29 provision of this chapter, any rule or order adopted by the
53 30 commissioner, or any written agreement entered into with the
53 31 commissioner.
53 32 4. When the commissioner finds that an activity in
53 33 violation of this chapter presents an immediate danger to the
53 34 health, safety, or welfare of the public requiring immediate
53 35 agency action, the commissioner may proceed under section
54 1 17A.18A.
54 2 5. In addition to the penalties and other enforcement
54 3 provisions of this chapter, any person who violates this
54 4 chapter is subject to a civil penalty of up to five thousand
54 5 dollars for each violation of this chapter. The civil penalty
54 6 shall be deposited into the general fund of the state. If a
54 7 person has not been ordered to pay restitution by a court, the
54 8 commissioner's order may require a person found to be in
54 9 violation of this chapter to make restitution to a person
54 10 aggrieved by a violation of this chapter.
54 11 6. Except for a fraudulent viatical settlement act
54 12 committed by a viator, the enforcement provisions and
54 13 penalties of this section shall not apply to a viator.
54 14 Sec. 16. NEW SECTION. 508E.16 UNFAIR TRADE PRACTICES.
54 15 A violation of this chapter, including the commission of a
54 16 fraudulent viatical settlement act, is an unfair trade
54 17 practice under chapter 507B and a person convicted of the
54 18 violation is subject to the penalties contained in that
54 19 chapter.
54 20 Sec. 17. NEW SECTION. 508E.17 CRIMINAL PENALTIES.
54 21 1. a. A person acting in this state as a viatical
54 22 settlement provider or viatical settlement broker, without
54 23 being licensed pursuant to section 508E.3, who willfully
54 24 violates any provision of this chapter or any rule adopted or
54 25 order issued under this chapter, is guilty of a class "D"
54 26 felony.
54 27 b. A person acting in this state as a viatical settlement
54 28 provider or viatical settlement broker, without proper
54 29 licensure who willfully violates any provision of this
54 30 chapter, or any rule adopted or order issued under this
54 31 chapter, and when such violation results in a loss of more
54 32 than ten thousand dollars, is guilty of a class "C" felony.
54 33 2. The commissioner may refer such evidence as is
54 34 available concerning violations of this chapter or of any rule
54 35 adopted or order issued under this chapter, or of the failure
55 1 of a person to comply with the licensing requirements of this
55 2 chapter, to the attorney general or the proper county attorney
55 3 who may, with or without such reference, institute the
55 4 appropriate criminal proceedings under this chapter.
55 5 Sec. 18. NEW SECTION. 508E.18 AUTHORITY TO PROMULGATE
55 6 RULES.
55 7 The commissioner shall have the authority to do all of the
55 8 following:
55 9 1. Adopt rules implementing and administering this
55 10 chapter.
55 11 2. Establish standards for evaluating reasonableness of
55 12 payments under viatical settlement contracts for persons who
55 13 are terminally or chronically ill. This authority includes
55 14 but is not limited to regulation of discount rates used to
55 15 determine the amount paid in exchange for assignment,
55 16 transfer, sale, devise, or bequest of a benefit under a life
55 17 insurance policy insuring the life of a person who is
55 18 chronically or terminally ill.
55 19 3. Establish appropriate licensing requirements, fees, and
55 20 standards for continued licensure for viatical settlement
55 21 providers and brokers.
55 22 4. Require a bond or other mechanism for financial
55 23 accountability for viatical settlement providers and viatical
55 24 settlement brokers.
55 25 5. Adopt rules governing the relationship and
55 26 responsibilities of both insurers and viatical settlement

55 27 providers and viatical settlement brokers during the
 55 28 viatication of a life insurance policy or certificate.
 55 29 Sec. 19. Section 507B.3, subsection 1, Code 2007, is
 55 30 amended to read as follows:
 55 31 1. A person shall not engage in this state in any trade
 55 32 practice which is defined in this chapter as, or determined
 55 33 pursuant to section 507B.6 to be, an unfair method of
 55 34 competition, or an unfair or deceptive act or practice in the
 55 35 business of insurance.
 56 1 a. A person who violates a provision in chapter 508E shall
 56 2 be deemed to have committed an unfair trade practice under
 56 3 this chapter.
 56 4 b. The issuance of a qualified charitable gift annuity as
 56 5 provided in chapter 508F does not constitute a trade practice
 56 6 in violation of this chapter.
 56 7 Sec. 20. CODIFICATION.
 56 8 1. The Code editor shall codify section 508E.1 as section
 56 9 508E.1A.
 56 10 2. The Code editor shall codify section 508E.1A, as
 56 11 enacted in this Act, as section 508E.1.
 56 12 Sec. 21. Section 508E.3A, Code 2007, is repealed.
 56 13 EXPLANATION
 56 14 This bill provides for the regulation of viatical
 56 15 settlements by the commissioner of insurance (commissioner).
 56 16 A viatical settlement is a transaction involving the sale of a
 56 17 life insurance policy (policy) issued by a life insurance
 56 18 company (insurer) before the policy matures. A viatical
 56 19 settlement may involve a number of parties including the
 56 20 "viator", "viatical settlement broker", "viatical settlement
 56 21 provider", and "insurer".
 56 22 The viator is the policy owner who agrees to sell their
 56 23 policy, presumably for less than its face value payable upon
 56 24 death, to a viatical settlement provider either directly or
 56 25 through a viatical settlement broker. The settlement is
 56 26 governed by a "viatical settlement contract". The bill
 56 27 contemplates that the viator may be chronically or terminally
 56 28 ill.
 56 29 Generally, the bill provides for a short title (Code
 56 30 section 508E.1A), amends the Code chapter's current
 56 31 definitional provisions (Code section 508E.2), eliminates
 56 32 current provisions relating to the regulation of viatical
 56 33 settlement contracts (Code section 508E.3), immunity from
 56 34 liability for persons who provide information to the
 56 35 commissioner (Code section 508E.3A), and authorization of the
 57 1 commissioner to adopt rules to administer the Code chapter
 57 2 (Code section 508E.4). The bill rewrites a number of these
 57 3 provisions and includes additional regulations as follows:
 57 4 CODE SECTION 508E.3 == LICENSE AND BOND REQUIREMENTS. The
 57 5 bill requires a viatical settlement provider or viatical
 57 6 settlement broker to obtain a license by the commissioner or
 57 7 from the commissioner of the viator's state of residence. The
 57 8 bill provides for the issuance and renewal of licenses, the
 57 9 disclosure of information relating to the applicant's
 57 10 business, and the payment of license and renewal fees. It
 57 11 also requires the viatical settlement provider or viatical
 57 12 settlement broker provide evidence of financial responsibility
 57 13 to the commissioner (e.g., by posting a surety bond with the
 57 14 commissioner).
 57 15 CODE SECTION 508E.4 == LICENSE REVOCATION AND DENIAL. The
 57 16 bill provides that the commissioner may refuse to issue,
 57 17 suspend, revoke, or refuse to renew the license of a viatical
 57 18 settlement provider or viatical settlement broker for cause,
 57 19 including misrepresentation or fraud, a violation of the
 57 20 bill's provisions, a failure to honor a contractual
 57 21 obligation, the use of an unfair or unreasonable practice, or
 57 22 the wrongful transfer of a policy.
 57 23 CODE SECTION 508E.5 == APPROVAL OF VIATICAL SETTLEMENT
 57 24 CONTRACTS AND DISCLOSURE STATEMENTS. The bill requires a
 57 25 viatical settlement producer or viatical settlement broker to
 57 26 file with the commissioner forms used in their business. The
 57 27 commissioner must approve the documents which comply with the
 57 28 bill's requirements.
 57 29 CODE SECTION 508E.6 == REPORTING REQUIREMENTS AND PRIVACY.
 57 30 The bill requires that a viatical settlement provider file an
 57 31 annual statement with the commissioner involving transactions
 57 32 conducted in this state. Certain information that could
 57 33 compromise the privacy of personal, financial, and health
 57 34 information of the viator is filed with the commissioner on a
 57 35 confidential basis.
 58 1 CODE SECTION 508E.7 == EXAMINATION OR INVESTIGATIONS. The
 58 2 bill provides that the commissioner may conduct examinations

58 3 of viatical settlement providers and viatical settlement
58 4 brokers licensed under the bill's provisions. It provides for
58 5 the authority, scope, and scheduling of examinations; requires
58 6 licensees to retain business records; provides for the conduct
58 7 of an examination; provides for the preparation of examination
58 8 reports; provides for the confidentiality of examination
58 9 information; prohibits a conflict of interest by an examiner;
58 10 provides for the payment of costs associated with
58 11 examinations; provides for immunity from liability; and
58 12 provides investigatory authority to the commissioner.

58 13 CODE SECTION 508E.8 == DISCLOSURE TO VIATOR. The bill
58 14 requires that a viatical settlement provider or viatical
58 15 settlement broker disclose information regarding their
58 16 business, their relationship with the viator and viatical
58 17 settlement producer, and the transaction. The type of
58 18 disclosure includes possible legal implications that could
58 19 result from executing a viatical settlement contract (e.g.,
58 20 tax consequences, claims of creditors, and proceeds from
58 21 Medicaid or other government benefits); statutory rights
58 22 granted under a viatical settlement contract (e.g., the right
58 23 of rescission and when moneys must be paid to the viator); the
58 24 terms and conditions of the transaction (e.g., the dollar
58 25 amount of the current benefits payable to the viatical
58 26 settlement provider under the policy and how funds will be
58 27 escrowed with an independent third party during the transfer
58 28 process); and the viatical settlement broker's business
58 29 relationship with the parties (e.g., the receipt of competing
58 30 offers and how the broker is to be compensated). A viatical
58 31 settlement provider who transfers ownership or changes the
58 32 policy's beneficiary must notify the viator of the change.

58 33 CODE SECTION 508E.9 == DISCLOSURE TO INSURER. The bill
58 34 requires that a viatical settlement broker or viatical
58 35 settlement provider disclose information regarding business
59 1 transactions to the insurer.

59 2 CODE SECTION 508E.10 == GENERAL RULES. The bill provides a
59 3 number of general requirements imposed upon the parties.

59 4 Prior to entering into a viatical settlement contract, a
59 5 viatical settlement provider must obtain a medical statement
59 6 attesting to the viator's sound mental condition and a release
59 7 of the viator's medical records. The viatical settlement
59 8 provider must notify the insurer that the insurance policy has
59 9 or will become a viaticated policy and include a copy of the
59 10 medical release.

59 11 The insurer must verify the policy's coverage to the
59 12 viatical settlement provider or viatical settlement broker as
59 13 requested.

59 14 The viatical settlement provider must obtain a witnessed
59 15 document affirming that the viator knowingly consented to the
59 16 viatical settlement contract.

59 17 The viator's medical information is confidential.

59 18 A viator has an absolute right to rescind a viatical
59 19 settlement contract within a time certain, subject to giving
59 20 notice of the rescission to a viatical settlement provider and
59 21 repaying the viatical settlement provider proceeds associated
59 22 with the transfer (e.g., the settlement and premiums, loans,
59 23 and loan interest paid by or on behalf of the viatical
59 24 settlement provider).

59 25 The documents and moneys required to effect the change in
59 26 the policy and consideration for the change must be delivered
59 27 to the parties through an independent escrow agent.

59 28 The failure by a viatical settlement provider to provide a
59 29 viator timely payment allows the viator to void the viatical
59 30 settlement contract.

59 31 Limitations are placed on the right of a viatical
59 32 settlement provider or viatical settlement broker to contact
59 33 an insured for purposes of determining the insured's health
59 34 status.

59 35 CODE SECTION 508E.11 == PROHIBITED PRACTICES. The bill
60 1 prohibits a person from entering into a viatical settlement
60 2 contract prior to applying for a policy or within five years
60 3 of the date of issuance, unless a condition is satisfied
60 4 (e.g., the policy was issued upon the viator's exercise of
60 5 conversion rights) or some extraordinary occurrence is
60 6 independently established (e.g., the viator becomes terminally
60 7 or chronically ill, physically or mentally disabled, or
60 8 financially distressed). The bill prohibits a provider from
60 9 entering into a premium finance agreement if a person is to
60 10 receive consideration from the policy or a policy owner that
60 11 are in addition to amounts required to pay the policy
60 12 premiums. The additional amounts are to be paid to the
60 13 original owner of the policy or their estate.

60 14 The insurer must respond to a demand effecting change of a
60 15 policy's ownership or beneficiary within a time certain.

60 16 CODE SECTION 508E.12 == PROHIBITED PRACTICES AND CONFLICTS
60 17 OF INTEREST. The bill prohibits a viatical settlement broker
60 18 or viatical settlement provider from having a conflict of
60 19 interest in connection with a viatical settlement (e.g.,
60 20 certain payments between viatical settlement providers and
60 21 viatical settlement brokers). The bill restricts advertising.
60 22 Advertising materials must be filed with the commissioner and
60 23 no suggestion can be made that a settlement is provided free
60 24 to the viator.

60 25 CODE SECTION 508E.13 == ADVERTISING FOR VIATICAL
60 26 SETTLEMENTS. The bill requires a viatical settlement provider
60 27 or viatical settlement broker to establish and maintain a
60 28 system of control over the dissemination of advertisements.
60 29 It requires that advertisements be truthful and that
60 30 information not be presented to a prospective viator in a
60 31 misleading manner (e.g., minimized, obscured, or ambiguous).
60 32 It restricts the use of testimonials, appraisals, or
60 33 endorsements; restricts the use of names and symbols (e.g., a
60 34 trade name, service mark, slogan, or symbol) in a misleading
60 35 manner; or prohibits an impression that a governmental entity
61 1 approves a viatical settlement broker or viatical settlement
61 2 provider or a transaction.

61 3 CODE SECTION 508E.14 == FRAUD PREVENTION AND CONTROL. The
61 4 bill provides for a number of measures to prevent and control
61 5 fraud.

61 6 A number of acts involving fraud or interference with an
61 7 investigation is prohibited. A person convicted of a felony
61 8 cannot participate in the business of viatical settlements. A
61 9 viatical settlement contract must contain a fraud warning. A
61 10 person engaged in the business of viatical settlements must
61 11 report violations of the bill to the commissioner.

61 12 A person who furnishes information regarding fraud to the
61 13 commissioner or other law enforcement agency enjoys immunity
61 14 from liability (unless the information is furnished with
61 15 actual malice); the person may be entitled to an award of
61 16 attorney fees and court costs if the person prevails in a
61 17 cause of action relating to libel or slander.

61 18 Information obtained by the commissioner in an
61 19 investigation is confidential with certain exceptions (e.g.,
61 20 information released as part of an administrative or judicial
61 21 proceeding or to a law enforcement or regulatory agency).

61 22 A viatical settlement provider or viatical settlement
61 23 broker must implement antifraud initiatives to detect,
61 24 prosecute, and prevent fraudulent viatical settlement acts,
61 25 and submit related antifraud plans to the commissioner.

61 26 CODE SECTION 508E.15 == INJUNCTIONS == CIVIL REMEDIES ==
61 27 CEASE AND DESIST ORDERS == CIVIL PENALTIES. The bill
61 28 authorizes the commissioner to seek injunctive relief in order
61 29 to restrain a person from violating the bill's provisions.

61 30 A person damaged by a violation may bring a civil action
61 31 against the person committing the violation. The commissioner
61 32 may issue an emergency order to require a person to
61 33 immediately cease and desist from a violation.

61 34 A person who violates a provision of the bill is subject to
61 35 a civil penalty.

62 1 CODE SECTION 508E.16 == UNFAIR TRADE PRACTICE. The bill
62 2 provides that a violation of the bill's provisions is
62 3 considered a violation of Code chapter 507B, governing
62 4 insurance trade practices.A

62 5 CODE SECTION 508E.17 == CRIMINAL PENALTIES. The bill
62 6 provides that a person acting in this state as a viatical
62 7 settlement provider or viatical settlement broker, without
62 8 being licensed, who willfully violates any provision of the
62 9 bill's new Code chapter, including a rule adopted or order
62 10 issued under the bill's new Code chapter is guilty of a class
62 11 "D" felony. However, if the violation involves a willful
62 12 violation by a viatical settlement provider or viatical
62 13 settlement broker, resulting in the loss of more than \$10,000,
62 14 the person committing the offense is guilty of a class "C"
62 15 felony. A class "D" felony is punishable by confinement for
62 16 no more than five years and a fine of at least \$750 but not
62 17 more than \$7,500. A class "C" felony is punishable by
62 18 confinement for no more than 10 years and a fine of at least
62 19 \$1,000 but not more than \$10,000. The bill provides that the
62 20 commissioner may refer evidence concerning violations to the
62 21 attorney general or the proper county attorney for
62 22 prosecution.

62 23 CODE SECTION 508E.18 == AUTHORITY TO PROMULGATE
62 24 REGULATIONS. The bill authorizes the commissioner to adopt

62 25 rules necessary to implement and administer the Code chapter.
62 26 As part of this authority, the commissioner is responsible for
62 27 establishing a standard for payments under viatical settlement
62 28 contracts, establishing licensing requirements and fees,
62 29 establishing standards for evidence of financial
62 30 responsibility, and governing the responsibilities of
62 31 insurers, viatical settlement providers, and viatical
62 32 settlement brokers.
62 33 UNCODIFIED PROVISIONS. The bill provides directions to the
62 34 Code editor necessary to renumber sections in conformity with
62 35 the model Act.
63 1 LSB 5446SV 82
63 2 da/rj/5